State of New York
Court of Appeals

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To be argued Tuesday, January 7, 2020

No. 1 Matter of Regina Metropolitan Co., LLC v New York State Division of Housing and Community Renewal

In August 2005, Leslie Carr and Harry Levy signed a market rate lease for a Manhattan apartment owned by Regina Metropolitan Co., which had removed the apartment from rent stabilization in 2003 pursuant to the luxury decontrol provisions of the Rent Stabilization Law (RSL). Regina was receiving tax benefits for its building through New York City's J-51 program and continued to do so until 2013. The tenants' initial monthly rent was $5,195. In 2009, the Court of Appeals ruled in Roberts v Tishman Speyer Properties (13 NY3d 270) that landlords "were not entitled to take advantage of the luxury decontrol provisions of the [RSL] while simultaneously receiving tax incentive benefits" under the J-51 program. Two weeks later, Carr and Levy filed a rent overcharge complaint against Regina with the Division of Housing and Community Renewal (DHCR), contending they were entitled to a rent-stabilized lease with a legally valid rent, among other things.

DHCR found that Regina's deregulation of the apartment was illegal, but was not willful or fraudulent because it was consistent with DHCR's interpretation of the law prior to Roberts. To calculate the proper amount of rent, DHCR looked beyond the four-year limitations period of RSL § 26-516(a)(2) and CPLR 213-a to find the most recent legal regulated rent, which was the $2,097 per month charged in 2003. It said the market rent actually charged on the "base date" in 2005, four years prior to the tenants' complaint, was "unreliable due to an erroneous deregulation" of the apartment. DHCR then added subsequent increases that would have been allowed under rent stabilization to determine that the proper base date rent was $3,325 and that the tenants were entitled to an overcharge repayment of $207,193 plus interest for the period since 2005.

Regina brought this suit against DHCR to challenge the decision and the tenants intervened. Supreme Court confirmed DHCR's determination, ruling the agency employed a rational method to calculate a reliable base date rent even though it looked beyond the limit of the four-year rule.

The Appellate Division, First Department modified on a 3-2 vote and remanded the case to DHCR "to recalculate the base date rent by looking back to four years before the filing of the overcharge complaint." In the absence of fraud, it said, the RSL and statute of limitations bar DHCR from looking back into rental history more than four years before the complaint was filed. It noted that "DHCR is not limited to calculating the base date rent according to the market rate that obtained pursuant to the parties' lease, and ... the agency has the discretion to implement other methods of base date rent calculation that do not run afoul of the limitations period."

The dissenters said DHCR's method of basing its calculations of legal rent and overcharges on "the last rent-stabilized rent" is necessary to give effect to Roberts. The method "rectifies the erroneously deregulated rent and ensures that subsequent regulated rents are based upon a reliable rent. It restores the parties to the lawful position they would have been in had the Roberts interpretation of the [RSL] been followed at the relevant time."

The parties disagree about whether the Housing Stability and Tenant Protection Act of 2019, enacted after the Appellate Division ruling, applies to this case and permits review of all relevant rental history in overcharge proceedings.

For appellant DHCR: Assistant Solicitor General Ester Murdukhayeva (212) 416-6279
For intervenors-respondents Carr and Levy: Darryl M. Vernon, Manhattan (212) 949-7300
For respondent Regina Metropolitan: Niles C. Welikson, Williston Park (516) 535-1700

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To be argued Tuesday, January 7, 2020

No. 2 Raden v W7879, LLC.

Joel and Odette Raden originally rented their Manhattan apartment under a market rate lease in 1995, the same year the then-owner of their building deregulated the apartment under the luxury decontrol provisions of the Rent Stabilization Law (RSL). The owner had been receiving J-51 tax benefits from New York City since 1993 and continued to receive them into 2014. After the Court of Appeals ruled in Roberts v Tishman Speyer Properties (13 NY3d 270 [2009]) that landlords could not deregulate rent stabilized apartments in buildings for which they were receiving J-51 benefits, the owner determined in 2010 that the Radens' apartment had been improperly deregulated and that they were entitled to a stabilized lease with recalculated rent and a refund of overcharges. Although the Radens had not filed an overcharge complaint, the owner conducted his review as though they had filed one in May 2010 and based his rent and overcharge calculations on the market rate lease that was in effect four years earlier, in May 2006. This resulted in a reduction of the monthly rent from $4,000 to $3,965 and an overcharge refund of $140.59. The Radens then brought this action against the current owners of their building, W7879 LLC and related entities, seeking declaratory relief, additional overcharges, treble damages and attorneys' fees.

Supreme Court referred the matter to a special referee, who found the rent calculations performed by the owners "are substantially correct." He said that, because the state Division of Housing and Community Renewal (DHCR) allowed landlords receiving J-51 benefits to pursue luxury deregulation of their apartments prior to Roberts, the Radens could not show that the owners "knew or should have known that the apartments could not be luxury deregulated." Therefore, the referee concluded, the owners "did not engage in any fraud with respect to deregulating the apartment in question, thereby limiting the look-back period for any overcharge to four years;" and they "did not willfully deregulate the apartment so that [Raden] is not entitled to treble damages or attorney's fees." He found the Radens were entitled to an additional overcharge refund of $448.50. Supreme Court confirmed the referee's report.

The Appellate Division, First Department affirmed on a 4-1 vote, saying, "As we have explained in Matter of Regina Metro. Co., LLC v New York State Div. Of Hous. & Community Renewal," which it decided the same day, "9 NYCRR 2526.1(a)(2)(ii) and CPLR 213-a are 'categorical in barring any examination of a unit's rental history beyond the four-year limitations period,' with the sole exception being cases in which there is evidence that the landlord committed fraud in order to avoid the regulatory scheme...." The court said it previously "considered the very building involved in this case and upheld a determination that this same landlord had not engaged in a fraudulent scheme" to deregulate an apartment "and had not acted with willfulness.... The same result should obtain here."

The dissenter said the case should be remanded "for a recalculation of the rent overcharge in accordance with Taylor v 72A Realty Assoc., L.P. (151 AD3d 95 [1st Dept 2017]), for the reasons explained in both Taylor and the dissent in" Regina Metro. (164 AD3d 420 [1st Dept 2018]).

For appellants Raden: Seth A. Miller, Manhattan (212) 587-2400
For respondents W7879 et al: Nativ Winiarsky, Manhattan (212) 869-5030

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To be argued Tuesday, January 7, 2020

No. 3 Taylor v 72A Realty Associates, L.P.

Tamara Jenkins signed a market-rate lease for a Manhattan apartment in 2000 at a monthly rent of $2,200. The landlord, 72A Realty Associates, had just removed the apartment from rent stabilization under luxury decontrol provisions of the Rent Stabilization Law (RSL). The building was enrolled in the City's J-51 tax abatement program at the time, but the owner relied on legal guidance from the state Division of Housing and Community Renewal (DHCR) that deregulation was permissible in that circumstance. The J-51 benefits expired in 2003. James Taylor was added as a tenant on the lease in 2004. In 2009, this Court rejected DHCR's interpretation of the RSL in Roberts v Tishman Speyer Properties (13 NY3d 270) and held that landlords could not deregulate rent stabilized apartments while they were receiving J-51 benefits. In late 2013, the owner offered Jenkins and Taylor a rent-stabilized lease at $4,076.18 per month, which they signed. In 2014, the tenants brought this overcharge action against the owner seeking a declaration that their apartment is rent stabilized and a judgment setting the maximum legal rent. They also sought recovery of overcharges, treble damages, and attorneys' fees.

Supreme Court declared the plaintiffs were entitled to rent-stabilized status from the beginning of their tenancy, but said further proceedings are needed to determine the legal amount of the current stabilized rent and whether treble damages or attorneys' fees are appropriate.

The Appellate Division, First Department largely affirmed, saying the apartment "must be returned to rent stabilization as of 2000, when the owner first treated the apartment as exempt," and the plaintiffs are the rent-stabilized tenants. To determine the legally regulated rent on the base date of February 21, 2010 – four years before the overcharge suit was filed – it said courts cannot simply accept the $3,500 per month rent in effect on that date because it was "based on the owner's misapprehension that apartment 5M was not subject to rent stabilization." Instead, they must calculate the amount of permissible increases that could have been charged since the initial lease expired in 2002, despite the 4-year limitations period of CPLR 213-a, it said. "We cannot reconcile a mechanical application of CPLR 213-a and give effect to the retroactive application of Roberts ... without considering the permitted rent stabilization increases ... preceding February 21, 2010. Only in this manner can it be determined whether the rent the owner charged plaintiffs on the base date bears any relation to a permissible, rent-stabilized rent." It said the owner "disproved any fraud" in the setting of rent, but said further proceedings are needed to determine whether any overcharge was willful.

The owner argues the Appellate Division "erred in employing a novel method of calculating the base date rent and overcharges that utilizes rental history prior to the four-year base date.... The method ... used by the court below is inconsistent with unambiguous controlling law, decisions of this Court and multiple other First Department cases." It contends the court also erred in remanding to consider whether it acted willfully, saying other First Department panels "have held that even if there were overcharges, attorneys' fees and treble damages are not available in J-51 cases like this one where the owner did nothing more than rely on the DHCR's mistaken statutory interpretation." The owner argues an apartment's stabilized status should end when J-51 benefits expire. "The legislature's intent in enacting the J-51 exception to luxury decontrol ... was to ensure that buildings would not simultaneously receive J-51 benefits and luxury decontrol benefits.... That concern ends when the J-51 expires."

For appellant 72A Realty Associates: Joel M. Zinberg, Manhattan (917) 721-4319
For respondents Taylor and Jenkins: Robert E. Sokolski, Manhattan (212) 571-4080

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To be argued Tuesday, January 7, 2020

No. 4 Reich v Belnord Partners, LLC

In 2005, Elizabeth Reich and Stanlee Brimberg signed a market-rate lease for an apartment in the Belnord building on the Upper West Side. The then-owner of the Belnord had deregulated the apartment under the luxury decontrol provisions of the Rent Stabilization Law (RSL) while the building was enrolled in the City's J-51 tax abatement program. Subsequent owners continued to receive J-51 benefits until 2018. The initial monthly rent was $18,500 for the eight-room apartment, which included four bedrooms and a maid's room, and rose to $20,000 per month for the last two years of the lease, from 2008 to 2010. In 2009, this Court ruled in Roberts v Tishman Speyer Properties (13 NY3d 270) that landlords could not deregulate rent stabilized apartments while they were receiving J-51 benefits, rejecting longstanding legal guidance from the Division of Housing and Community Renewal (DHCR). In 2010, Extell Belnord LLC, which had acquired the building in 2006, informed Reich and Brimberg of the Roberts ruling, gave them a stabilized lease, and registered the apartment as rent stabilized with DHCR. Belnord Partners LLC (Belnord) continued to give the tenants rent-stabilized leases each year after it acquired the building in 2015. The tenants brought this overcharge action against Belnord and Extell in 2016, claiming their current stabilized rent was improperly based on the "illegal" base date rent of $20,000 per month that was in effect in 2010.

Supreme Court dismissed their overcharge claim as time barred by the 4-year limitations period set in CPLR 213-a. It noted that the First Department considered rental history beyond the 4-year look back period in Taylor v 72A Realty Assocs. (151 AD3d 95 [2017]), but said this case is distinguishable. "[A]fter the Roberts decision, some owners simply ignored the ruling and later scrambled to comply only after tenants brought overcharge complaints. But the defendants here did exactly what those owners (and the owner in Taylor) did not do – they acknowledged the Roberts decision, informed tenants about the ruling, quickly registered the apartment with the DHCR and provided subsequent rent increases in accordance with the applicable guidelines. The court finds no reason to look beyond the four-year look back period where there is no indication of fraud by defendants...." Further, it said, the plaintiffs did not explain their delay in filing suit. "Plaintiffs were told in 2010 about Roberts and they waited until 2016 to bring this case, after they had signed rent-stabilized leases in 2011, 2012, 2013, and 2014."

The Appellate Division, First Department affirmed, saying, "Consistent with both Matter of Regina Metro. Co., LLC v New York State Div. Of Hous. & Community Renewal (164 AD3d 420 ... [1st Dept 2018] ...) and Taylor..., there was no basis for considering the subject apartment's rental history more than four years before the commencement of the overcharge claim.... In Taylor..., we permitted a longer look back period under certain circumstances not necessarily indicative of fraud. Those circumstances are not present where, as here, the tenant received a rent stabilized lease and the landlord registered the rent with DHCR more than four years before any rent overcharge complaint was filed."

The tenants argue they are entitled to an award of overcharges, treble damages, and legal fees. Pursuant to Roberts and the Housing Stability and Tenant Protection Act of 2019, they say, "a landlord must prove a proper and legally established base date rent, and not simply use the rent from an illegally deregulated lease, any registration statement relied upon by a landlord must be a reliable one, and the court may go back more than four years from the filing of a complaint ... in examining all available evidence necessary to establish a legal stabilized rent...."

For appellants Reich and Brimberg: Darryl M. Vernon, Manhattan (212) 949-7300
For respondents Belnord and Extell: Deborah Riegel, Manhattan (212) 551-8462

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To be argued Tuesday, January 7, 2020

No. 5 Collazo v Netherland Property Assets LLC

Tenants of 18 apartments in a Bronx building owned by Netherland Property Assets LLC brought this action against Netherland and its management company in 2016, alleging that the landlord illegally charged them unregulated rents while it was receiving J-51 tax benefits from New York City. They relied on the Court of Appeals' 2009 ruling in Roberts v Tishman Speyer Properties (13 NY3d 270), which held that landlords "were not entitled to take advantage of the luxury decontrol provisions of the Rent Stabilization Law (RSL) while simultaneously receiving tax incentive benefits under the City of New York's J-51 program." The tenants sought a judgment that their apartments are subject to rent stabilization under the RSL and determining their legal regulated rents; judgment that non-stabilized leases are invalid; separate judgments for their rent overcharges, as well as treble damages and attorneys' fees for violation of the RSL. They also made a claim for deceptive business practices under General Business Law § 349. The apartments have since been re-registered as rent stabilized, but the Tenants still seek a judgment declaring their leases invalid, judgments for their rent overcharges, along with treble damages and attorneys' fees. Netherland moved to dismiss the suit under the doctrine of primary jurisdiction, which generally provides that courts should refer issues that are within an agency's area of special expertise to that agency for resolution. Netherland argued the action should be resolved by the state's Division of Housing and Community Renewal (DHCR).

Supreme Court granted the defense motion to dismiss the complaint, saying that although it "clearly has concurrent jurisdiction with DHCR," issues of whether the apartments are subject to rent stabilization, the legal rents to be charged, and rent overcharge claims "are questions best for DHCR.... [T]he questions raised about the applicability of the rent stabilization law and the proper amount of rent is within the agency's specialized experience and technical expertise." It dismissed the General Business Law claims because they relate to a "private contract dispute" with a landlord that did not involve "consumer oriented conduct aimed at the public at large."

The Appellate Division, First Department affirmed, saying the lower court "providently exercised its discretion in ruling that plaintiffs' rent overcharge claims should be determined by [DHCR] in the first instance...."

The tenants say they "elected to bring their individual claims as a multi-plaintiff action in Supreme Court, as was their right. In the Supreme Court all of Plaintiffs' claims can be heard together, whereas at the DHCR their claims would be filed individually and assigned to individual case examiners. Also, in Supreme Court, Plaintiffs would have full rights of pre-trial discovery..., which are not available at the DHCR. Moreover, as the facts of Plaintiffs' cases are all very similar, and all Plaintiffs have elected to retain the same counsel, it is desirable that they be brought together in Court rather than individually at the DHCR." They say New York courts "have held repeatedly that it is the tenant's choice whether to bring this type of claim in the Court or at the DHCR." They also cite language in the Housing Stability and Tenant Protection Act of 2019 giving courts and DHCR concurrent jurisdiction for rent overcharge claims "subject to the tenant's choice of forum."

For appellants Collazo et al (Tenants): Ronald S. Languedoc, Manhattan (212) 349-3000
For respondents Netherland et al: Adrienne B. Koch, Manhattan (212) 953-6000

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