State of New York
Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Tuesday, June 4, 2019

No. 50 Kuzmich v 50 Murray Street Acquisition LLC
No. 51 West v B.C.R.E. - 90 West Street, LLC

The primary question in these appeals is whether the high-rent deregulation provisions of the Rent Stabilization Law (RSL) apply to buildings receiving tax benefits under Real Property Tax Law § 421-g, or is the deregulation of rents in such buildings forbidden by section 421-g? The tenants of three residential buildings in lower Manhattan brought these actions against the building owners, who began receiving tax abatements under section 421-g between 2001 and 2005. The plaintiffs sought a declaration that their apartments were subject to rent stabilization pursuant to section 421-g and reimbursement of rent overcharges, among other things.

Section 421-g (6) states, in part, "Notwithstanding the provisions of any local law for the stabilization of rents in multiple dwellings or the emergency tenant protection act of nineteen seventy-four, the rents of each dwelling unit in an eligible multiple dwelling shall be fully subject to control under such local law, unless exempt under such local law from control by reason of the cooperative or condominium status of the dwelling unit, for the entire period for which the eligible multiple dwelling is receiving benefits pursuant to this section...."

Supreme Court granted partial summary judgment to the tenants in both cases, declaring their apartments are subject to rent stabilization based on the "unambiguous" language of section 421-g. In Kuzmich, the court said that "the introductory '[n]otwithstanding' phrase..., clearly refers to provisions in the RSL and the Emergency Tenant Protection Act of 1974, such as the high-rent and high-income decontrol provisions enacted in the Rent Regulation Reform Act of 1993 (RSL § 26-504.3), that are contrary to the regulation of rent. RPTL § 421-g provides that, regardless of those provisions, 'the rents of each dwelling unit in an eligible multiple dwelling shall be fully subject to control under' the RSL, except for dwelling units that are exempted by the RSL, because they are cooperatives or condominiums."

The Appellate Division, First Department reversed in both cases, declaring the plaintiffs' apartments were properly deregulated. It said in Kuzmich, "Except for condominiums and cooperatives, dwellings in buildings that receive tax benefits pursuant to Real Property Tax Law § 421-g are subject to rent stabilization for the entire period the building is receiving 421-g benefits (RPTL 421-g [6]). However, 421-g buildings are subject to the luxury vacancy decontrol provisions of Rent Stabilization Law of 1969 (Administrative Code of City of NY) § 26-504.2(a), unlike buildings that receive tax benefits pursuant to Real Property Tax Law §§ 421-a and 489. [Section] 421-g does not create another exemption to Rent Stabilization Law § 26-504.2(a).... As plaintiffs point out, if 421-g buildings are subject to luxury vacancy decontrol, then most, if not all, apartments in buildings receiving 421-g benefits would, in fact, never be rent-stabilized, because the initial monthly rents of virtually all such apartments were set, as here, at or above the deregulation threshold. Although courts should construe statutes to avoid 'objectionable, unreasonable or absurd consequences'..., the legislative history in this case demonstrates that the legislature was aware of such consequences during debate on the bill that enacted" section 421-g.

For appellants Kuzmich and West et al: Robert S. Smith, Manhattan (212) 833-1100
For respondent 50 Murray: James M. McGuire, Manhattan (646) 837-5151
For respondent B.C.R.E.: Magda L. Cruz, Manhattan (212) 867-4466

State of New York
Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Tuesday, June 4, 2019

No. 52 Tomhannock, LLC v Roustabout Resources, LLC

In April 2002, Tomhannock, LLC sold 15.94 acres of vacant land in the Town of Pittstown, Rensselaer County, subject to an option agreement in which the buyers agreed to reconvey a 3.5-acre portion of the parcel to Tomhannock if it requested the reconveyance within 10 years of the original sale. As partial consideration for the option, Tomhannock reduced the purchase price by about $55,000; and the agreement permitted the buyers to terminate Tomhannock's right of reconveyance by payment of $55,000. The option agreement also states, "The Reconveyance Deed, together with such other instruments necessary for recording the Reconveyance Deed, shall be prepared and filed at the expense of Tomhannock. [The buyers] shall cooperate with Tomhannock in making such reconveyance, at no cost to Purchaser. Such cooperation may include, among other things, in making application for required municipal approvals for the reconveyance of the Reconveyance Parcel i[f] such are deemed necessary or desirable by Tomhannock...."

The buyers sold the 15.94-acre parcel to Ronald and Linda LaPorte in 2005. In January 2011, within the 10-year option period, Tomhannock advised the LaPortes that it was exercising its option on the 3.5-acre parcel. Instead of reconveying the 3.5 acres to Tomhannock, the LaPortes sold the entire 15.94 acre parcel to Roustabout Resources, LLC. In July 2011, still within the 10-year option period, Tomhannock again exercised its option and demanded that Roustabout reconvey the 3.5-acre parcel. When Roustabout refused, Tomhannock brought this action for specific performance of the option agreement. Roustabout moved to dismiss on the ground that, because Tomhannock had never sought subdivision approval for the 3.5-acre parcel from the town, it could not meet its obligation under the agreement to record the reconveyance deed.

Supreme Court denied the motion and ordered Roustabout to sign the deed, saying "the obligation to record the deed is not a condition precedent to defendant's obligation to reconvey title" to the 3.5 acres.

The Appellate Division, Third Department affirmed on a 3-2 vote, ruling that "the option agreement does not set forth any condition precedents to defendant's performance thereunder.... [W]e do not interpret the option agreement before us as requiring plaintiff to record the deed obtained subsequent to exercising its rights relative to the 3.5-acre parcel – only a provision that, if it elects to do so, it be at its expense. To be sure, plaintiff's inability and/or failure to record the reconveyance deed may present practical difficulties for the parties. Such difficulties, however, neither undermine nor stand as an impediment to plaintiff's exercise of the reconveyance rights that it possesses under the clear and unambiguous terms of the option agreement."

The dissenters said Roustabout's obligation to execute the deed "is preceded by that of plaintiff to prepare the deed 'together with such other instruments necessary for recording,' and plaintiff is further required to file (which there is little doubt encompasses an obligation to record) those documents once executed.... Plaintiff, by failing to obtain subdivision approval, cannot prepare and record the reconveyance deed and accompanying documents as required and has therefore failed to substantially perform its commitments under the option agreement ... and is not entitled to specific performance."

For appellant Roustabout: Andrew W. Gilchrist, Troy (518) 238-3759
For respondent Tomhannock: Thomas D. Spain, Troy (518) 270-1220