Silver linings - by Shallini Mehra

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There is no sugar coating that NYC landlords are operating in challenging times with high interest rates, increasing operating expenses and over-regulation as it pertains to housing. Silver linings are few and far between, though one recent positive Court of Appeals decision qualifies: in the recent Casey v. Whitehouse Estates case, the highest court of the State held that as a general rule, tenants should not be granted a summary judgment motion on the issue of fraud in the context of J-51 class action lawsuits.

Alex Fotopoulos of Kourkoumelis & Fotopoulos PLLC explains, “simply put, this means that failure to re-register an apartment as rent stabilized because the building benefited from a J-51 does not constitute intentional fraud, and moreover, the burden to prove fraud has shifted to the tenant and their attorneys.”

By way of background, in 2009, the Court of Appeals ruled on the Roberts v. Tishman case and reversed the DHCR’s long-standing policy that apartments in buildings receiving J-51 benefits could be deregulated. This ruling went into effect for J-51s going forward. In 2011, the Roberts ruling became retroactive with the Gersten v. 56 7th Ave case, meaning that units previously deregulated during a J-51 period had to be returned to rent stabilization.

Chaos ensued regarding how to recalculate the legal registered rents and regulatory status of the affected apartments. It was not until 2020, when the Court of Appeals addressed J-51 apartments again and ruled in Regina Metropolitan v. D.H.C.R. that fraud should not be easily proven and rather, it should be the exception rather than the rule.

In the immediate aftermath of Regina and up until the Casey decision, tenants who brought class action lawsuits against their landlords for impermissibly deregulating apartments during the J-51 period were routinely granted summary judgment on their fraud claims. A summary judgment motion allows tenants to win their claims of fraud without having to go to trial and before completing significant discovery – simply by filing a motion.

Tenants had an easy path to a finding of fraud, which resulted in the catastrophic default formula to determine rents for the affected apartments (take the lowest rent stabilized rent for a similar size unit in the building or neighborhood).

“In Casey, the Court of Appeals said, ‘no more,’” says Fotopoulos. “The ruling held that fraud had not been established by the tenants and that fraud claims should generally not to be decided by a motion for summary judgment but rather they should be decided a trial. In the wake of Casey, the bar has been raised for proving fraud and there have been additional rulings that have denied tenants’ summary judgment motions on fraud claims related to J-51 cases. Tenants will have to go to trial and this process will make it more difficult and costly for tenants to prevail.”

The J-51 issue is tricky when considering that until 2009, deregulation during the benefit period was allowed. Additionally, many landlords did not own their respective buildings at the time the J-51 went into effect and yet they may still be liable today. Although it remains to be determined what the courts decide constitutes fraud, it does appear the courts are starting to see both sides—and small steps can eventually lead to more fair and impactful changes.

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