

The Impact of *Roberts v. Tishman Speyer Properties, L.P.*, on New York Real Estate and Practice

On October 22, 2009, the New York Court of Appeals issued its decision in *Roberts v. Tishman Speyer Properties, L.P.*, holding that landlords who receive tax benefits for building rehabilitation cannot exempt apartments in those buildings from New York's rent regulation laws. No. 07480, 2009 WL 3378513, at *1 (N.Y. Oct. 22, 2009). The decision, which may affect thousands of properties throughout New York City, will have important consequences for landlords, investors, and tenants.

I. Understanding Rent Control and Rent Stabilization

The first rent control laws emerged in New York City and other places throughout the United States in response to housing shortages caused by World War I. Today, two separate, though similar, rent control regimes exist in New York City; rent control, which appeared first, and rent stabilization, which came later. Both are administered by the New York State Division of Housing and Community Renewal ("DHCR").

In response to criticisms that rent regulation benefited tenants who could otherwise pay market rate rents, the state legislature passed a reform act in 1993. The reforms, as subsequently amended, provide for deregulation of controlled apartments if legally-regulated rent passes \$2,000 per month and, in the case of occupied, controlled apartments, household income exceeds certain thresholds.

Under its J-51 program, New York City offers tax exemptions or abatements for property owners who undertake certain types of improvements, which continue for a number of years. Those improvements can include rehabilitations, renovations, or conversion of non-residential buildings to residential use. One provision of the program requires that properties receiving tax benefits become subject to New York's rent stabilization laws. The dispute in *Roberts* emerged with respect to whether a property already subject to rent stabilization, which subsequently received J-51 benefits, could thereafter charge market rate rents if the rent and income thresholds of the reform act were otherwise met.

II. The Court's Decision in Roberts

Roberts begins in the heady days of 2006, when a joint venture between Tishman Speyer Properties and BlackRock Inc. paid \$5.4 billion for Peter Cooper Village and Stuyvesant Town. At that time, the purchasers believed that they could convert the complex, which had originally been built to house WWII veterans and their families, into luxury apartment buildings. Income from the property was projected to triple between 2006 and 2011, as the investors made improvements and moved many of the apartments from rent regulation to market rates.

After the new property owners began deregulating apartments, several tenants brought suit, claiming that the decontrol provisions of New York's rent stabilization laws could not be taken advantage of by the property owners because they were simultaneously receiving tax benefits under the J-51 program. Metlife, the prior owner of the complex, began receiving J-51 benefits in 1992, although rent stabilization throughout the complex began in 1974. J-51 benefits were expected to continue through 2017/2018.

The defendants argued that language in the relevant laws was written so that deregulation would be prohibited only if apartments became subject to rent stabilization laws because they received J-51 tax benefits. That is, defendants argued that rent deregulation was permissible because they took advantage of the J-51 program *after* apartments in both complexes became rent-regulated. Defendants also argued that DHCR had adopted their position on exemptions to New York's rent regulation laws at least as early as 1996 and that the agency's opinion on the matter was entitled to deference by the New York courts.

The Court of Appeals, New York's highest court, ruled in favor of the tenants. In a 4-2 opinion, it found that the defendants' interpretation of the relevant statutes conflicted with the most natural reading of them. The court determined that the distinction defendants wanted to draw, between properties that became stabilized prior to receiving J-51 benefits, and those that became stabilized "as a condition of receiving J-51 benefits," was not supported by the text or legislative intent. The court also rejected the argument that the defendants and the state agency responsible for administering New York's rent control laws had interpreted the laws similarly, or that the agency's interpretation of the law would be entitled to much deference anyway.

III. The Impact of the Decision

The immediate effect of the court's decision is hard to determine. The court left open for the trial court to decide, among other things, retroactivity, class certification and the measure of damages. For example, is the appropriate remedy payment of damages to tenants or disgorgement of tax benefits received under the J-51 program? Yet, the longer-term consequences of the decision may be more easily discernable.

With respect to Stuyvesant Town's owners, it seems that their financial position just became more precarious than it was prior to the decision. Without the ability to raise rents, it will be very difficult for the owners to raise enough capital to meet the payments on the debt undertaken to purchase the development during New York's property boom. Combined with the softening of the real estate market in New York, the value of their investment has fallen by more than half according to published reports,¹ and projections that the property would be worth \$7 billion within five years of the purchase price now seem highly unlikely.

Additionally, it seems clear that this decision could have a profound effect on many landlords throughout the city who have received J-51 tax benefits while also moving apartments out of rent-regulation as they navigate a period of uncertainty while the lower court takes up the remaining issues in the case.² Certainly, their lenders and investors should begin thinking about their possible exposure as well.

Will projects in the pipeline, already facing daunting market conditions, be put under further strain? Will landlords forgo benefits under the tax abatement program entirely, opting instead to pursue rent decontrol? Will the decision force another look at the efficacy of rent regulation?

Whether the decision turns out to be as calamitous for landlords (and the New York real estate market generally) as the defendants argued at trial remains to be seen.

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¹ See, e.g., Lingling Wei & Craig Karmin, *An Apartment Complex Teeters*, WALL ST. J., Oct. 15, 2009, at M12.

² An article in the New York Times noted that up to 80,000 apartment buildings in New York could be affected by this decision. Charles V. Bagli, *Court Deals Blow to Owners of Huge Apartment Complex*, N.Y. TIMES, Oct. 23, 2009, at A1.

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