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NO DESTABILIZING RENT STABILIZATION

In *Riverside Syndicate, Inc. v. Munroe*, Syndicate filed a suit back in 2004 seeking a declaration from a judge that a 1996 settlement agreement reached with its tenants -- waiving their rent stabilization protections in exchange for allowing them to use an apartment as their second home -- violated public policy and was void.

Victoria Munroe and Eric Saltzman rented three Riverside Drive apartments which were subject to rent-stabilization. According to the 1996 agreement, the tenants would lease the combined units at a monthly rate of $2,000.00, a sum which was well above the permissible "legal rent." However, as long as the tenants waived their rights to challenge the rent charged, Syndicate agreed that the tenants could keep the apartments, regardless of whether or not they actually lived there.

When the New York County Supreme Court denied the landlord's request to invalidate the agreement, Syndicate appealed to the Appellate Division First Department, which reversed and found the agreement to be "null, void, and of no force or effect."

con't on pg 2.

WHO WILL BE EVICTED?

In *Adelphi Assoc., LLC v. Gardner*, since Mr. Gardner was incapable of defending himself, within the context of a nonpayment case, a guardian ad litem (GAL) was appointed to represent the tenant's interests.

Without ever meeting or consulting with the tenant, the GAL agreed to convert the nonpayment to a holdover, and consented to an eviction.

When the tenant later secured counsel and asked the Kings County Civil Court to vacate the agreement and to restore him to possession, that request was denied.

On appeal, the Appellate Term, Second Department, sided with the tenant and vacated the agreement since it had been "inadvisedly entered into."

But the restoration request was denied with leave to renew, as the apartment's current occupant had not been joined to the case. Should that occur, the AT2 suggested the use of a "balancing test" to determine who would get to keep the unit -- after weighing such factors as the tenant's ability to pay his debts and future rent, together with the prejudice or injury the existing occupant would suffer.

Wouldn't want to be the judge that has to make that decision.

NO DESTABILIZING RENT STABILIZATION

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Rent Stabilization Code § 2520.13 provides that, "An agreement by the tenant to waive the benefit of any provision of … this code is void, provided, however, that based upon a negotiated settlement between the parties and with the approval of … a court of competent jurisdiction … a tenant may withdraw with prejudice, any complaint pending before the DHCR."

In view of that regulatory provision, and since no dispute had been "pending before the DHCR," the Court of Appeals agreed that the parties' settlement was unenforceable.

Notwithstanding that unfavorable outcome, the tenants are not without a remedy. As our state's highest court observed, "the tenants may well have a strong claim, subject to any statute of limitations defense that may exist, to recover the excess rent they paid; they may also have a strong claim to rescind the deregulation of the apartments, if that deregulation was the result of the illegal agreement."

If nothing else, tenants must learn never to mess with the Syndicate.

MONTH-TO-MONTH TENANT GETS ZONKED

In *Skinner v. Noy*, Rosalyn Skinner filed a small claims case to recover a security deposit from her former landlord, Freddie Noy.

Skinner initially sought to recoup her entire deposit of $3,450. However, she amended her claim to comport with the jurisdictional limit of the Small Claims Part of the Justice Court, and sought a reduced sum of $3,000.

The Rockland County Justice Court found that Skinner was entitled to recover her entire security deposit, minus $322 for the damage she caused to Noy's carpeting and awarded her the sum of $3,000.

On appeal, the Appellate Term, Second Department, sided with Skinner, but reduced the amount of her recovery to $1,953. The AT2 found that Noy was entitled to a month's rent because Skinner had "failed to give her landlord sufficient notice."

Since Skinner was a month-to-month tenant, New York Real Property Law § 232-b requires such tenants (outside the NYC area) to give a landlord notice "at least one month before the expiration of the term of [the] election to terminate.'"

Skinner admitted that she only notified Noy of her intent to vacate the premises on August 22, 2006, and moved out on August 31, 2006. As Skinner failed to satisfy the law's one-month advance-notice provision, the AT2 held that she was liable for the September 2006 rent, in the amount of $1,175.

The AT2 found no reason to disturb the lower court's decision regarding the premises' condition or Skinner's obligation to pay $322 for damage to the carpet, and only modified the judgment to account for the one-month's rent payment that was due to the former landlord.

Obviously, Skinner boxed herself into a reduced award.

If you have any questions or comments about the above articles, please contact partner Lucas A. Ferrara at 212-619-5400 x 211 or email him at LFerrara@fnfllp.com. To join the debate, visit us at www.nyreblog.com.

IS IT 3 OR 6 YEARS?

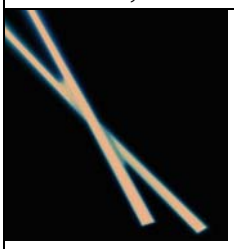
In *Rodriguez v. Central Parking System of New York, Inc.*, Rodriguez filed suit to recover the value of a car that had been stolen from one of Central Parking System's parking garages.

Inexplicably, Rodriguez waited more than three years. As a result, Central Parking System filed a motion to dismiss the case, claiming Rodriguez was barred by a three-year "statute of limitations" -- a state law requiring that cases be started within a delineated timeframe or the underlying claims are forever lost.

Believing that Rodriguez had 6 years to sue, the Civil Court of the City of New York denied the motion. On appeal, the Appellate Term, First Department, agreed and found that "[a]n action for failure to exercise due care in the performance of a contract, where the plaintiff seeks damages for injury to property or pecuniary interests, is governed by the six-year" limitations period.

While the AT1 conceded that it had previously applied a three-year period to cases of this type, it noted that the Court of Appeals -- our state's highest court -- "'has refused to apply a shortened negligence statute of limitations to a claim seeking breach-of-contract damages on a claim for property damages.'"

With that, the AT1 bailed out of the case … fast.



WHAT HAPPENED TO THE FOOD?

In *Guo Hua Wang v. Lang*, Guo Hua Wang filed suit against Charles H. Greenthal Management Corp. (Greenthal) to recover damages for personal injuries he sustained while making a food delivery to a tenant in a Greenthal building. (Wang was assaulted in the lobby by a building resident.)

When Greenthal's motion to dismiss the case was granted by the Kings County Supreme Court, Wang appealed to the Appellate Division, Second Department.

The AD2 held that "[w]hile the duty of the owner or possessor includes undertaking minimal precautions to protect visitors to the premises from reasonably foreseeable acts of third persons, it does not include protecting against unforeseeable and unexpected assaults."

Since Greenthal established that it had "no notice of any prior similar incidents such that it should have anticipated the alleged assault and protected the plaintiff," the AD2 agreed that Greenthal was entitled to the case's dismissal.

Now that's some tip.

DON'T STEP ON THIS GRASS

In *DiGeorgio v. Morotta*, Marilyn DiGeorgio filed suit to recover damages for personal injuries she incurred while on Michael Morotta's property. She was injured when she tripped and fell on a walkway -- that ran between the driveway and the front door -- which was slightly higher than the surrounding grass.

Unmoved by DiGeorgio's plight, the Kings County Supreme Court granted Morotta's motion to dismiss the case. Dissatisfied with that outcome, DiGeorgio took the next step up and appealed to the Appellate Division, Second Department.

The AD2 determined that the purported height differential "was readily observable by the reasonable use of [DiGeorgio's] senses, and was not inherently dangerous." Although the incident occurred in the evening, the evidence reflected that an exterior light had been activated and "there [was] no evidence that the injured plaintiff misstepped as the result of inadequate illumination."

Faced with those facts, the AD2 affirmed the dismissal.

We wouldn't want to be stepping into DiGeorgio's shoes.

If you have any questions or comments about the above articles, please contact partner Jonathan H. Newman at 212-619-5400 x 205 or email him at JNewman@fnfllp.com. To join the debate, visit us at www.nyreblog.com.

A HOLE TO AVOID

In *Yarborough v. City of New York*, Kashawn Yarborough sued the City of New York after sustaining serious injuries when he tripped and fell in a Brooklyn pothole.

According to the City's Pothole Law, the municipality must have prior written notice of the dangerous condition in order to incur liability. Without that notice, the burden then shifts to the injured party to show that the City affirmatively created the defect.

Although Yarborough conceded that the City had been unaware of the pothole, his experts were of the opinion that the hole had been patched in an uneven manner, creating a "secondary tripping hazard." (Yarborough's experts further speculated that the patching eroded because the work had not been properly sealed.)

When its request to dismiss the case was denied by the Kings County Supreme Court, the City appealed to the Appellate Division, Second Department. And, since Yarborough was unable to show that the Big Apple's repair work created an "immediate hazard," the AD2 reversed and dismissed.

On appeal to our state's highest court, the New York State Court of Appeals affirmed the dismissal, finding that the City's negligence must "immediately result" in a dangerous condition, and that the deterioration of the asphalt patch which eventually caused Yarborough's injury, "developed over time with environmental wear and tear."

Should Yarborough have taken the fall, or did his legal team trip up?

If you have any questions or comments about the above article, please contact partner Daniel Finkelstein at 212-619-5400 x 209 or email him at DFinkelstein@fnfllp.com. To join the debate, visit us at www.nyreblog.com.

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