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RENT STABILIZATION

Four Year Rule: More Confusion


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Pursuant to the Omnibus Housing Act of 1983 (OHA) (L. 1983, ch. 403), the Legislature amended Rent Stabilization Law (RSL) §26-516(a) to impose a four-year statute of limitations on rent overcharge claims. The section provided that the base rent for purposes of calculating subsequent rent increases would no longer be the rent charged on the date the apartment first became stabilized, but would instead be "the rent indicated in the annual registration statement filed four years prior to the most recent registration statement…"

Consistent with the four-year statute of limitations, the Legislature, also pursuant to the OHA, added § 26-516(g) to the RSL, which limited an owner's recordkeeping obligations to four years.

The courts thereafter disagreed as to how to apply the four-year rule. Some courts deemed the rent charged four years prior to the complaint to be the legal, unchallengeable base rent, and would only award a tenant a refund based on overcharges collected above the base. Other courts calculated the tenant's legal rent by going back more than four years, but limited the award to overcharges collected during the most recent four-year period.

The Legislature clarified this issue in the Rent Regulation Reform Act of 1997 (L. 1997, ch. 116). Section 33 of the act amended RSL §26-516(a)(2) to provide that '*no determination of an overcharge* and no award *or calculation of an award* of the amount of an overcharge may be based upon an overcharge having occurred more than four years before the complaint is filed" (material added by the act in italics).

Section 33 of the act also added the following language to RSL §26-516(a)(2)(ii):

> This paragraph shall preclude examination of the rental history of the housing accommodation prior to the four-year period preceding the filing of the complaint pursuant to this subdivision.

Thus, in 1997, the Legislature clarified the four-year rule, thus putting an end to all disputes and controversies as to its proper interpretation and application.

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Actually, that is not the way it worked out. In the almost 18 years since the 1997 Act was passed, this column has addressed the four-year rule no less than 13 times, almost invariably detailing how appellate courts were hopelessly split as to how the seemingly simple rule should be applied. The Court of Appeals' Feb. 24, 2015 ruling in *Conason v. Megan Holding* constitutes the high court's latest attempt to clarify the four-year rule, and features a spirited dissent by Judge Eugene F. Pigott.

'Conason'

Julie Conason moved into the subject rent stabilized apartment in 2003 pursuant to a two-year lease setting forth a monthly rent of $1,800. She renewed the lease in 2005 at $1,899 per month, and in 2007 at $1,995 per month. She continued to pay her rent through May 2008.

In April 2009, the landlord commenced a summary proceeding against Conason based on nonpayment of rent. Conason raised a counterclaim alleging rent overcharge.

The matter proceeded fitfully through Civil Court. At trial, the landlord asserted that a tenant named Suzuki Oki lived in the subject apartment for two months in 2003 at a monthly rent of $1,000. The Civil Court concluded that there was persuasive evidence that no such tenant had ever occupied the apartment; essentially, the landlord, in attempting to rebut the rent overcharge claim, had committed fraud. Notwithstanding, the Civil Court dismissed the overcharge complaint without prejudice.

Supreme Court

In 2011, Conason and Geoffrey Bryant commenced an action seeking a money judgment for rent overcharges, including treble damages for the period from April 2007 through April 2009. The landlord, citing the four-year rule, asserted that because the present action was not filed until June 2011, and because the alleged overcharge accrued in November 2003, the action was time barred under the four-year rule. Supreme Court (Kenney, J.) disagreed, holding that the claim was not time barred because "rather than calculating the statutory period from the commencement of the overcharge,

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such claims are determined backwards, from the date of the first claim of an overcharge."[1] Thus, the base date was April 2005 (four years prior to the assertion of the overcharge counterclaim). The rent charged on that date, however, could not be the base rent because, as the Civil Court had found previously, there was indicia that the base date rent was fraudulent.

The landlord thereafter appealed to the Appellate Division, First Department.[2] The court affirmed the Supreme Court, and granted the landlord leave to appeal to the Court of Appeals.

Court of Appeals

The Court of Appeals affirmed in all relevant respects in a decision authored by Judge Susan P. Read. Pigott issued a dissent. Newly appointed Judges Leslie E. Stein and Eugene M. Fahey took no part.

With respect to the four-year statute of limitations (codified in CPLR 213-a), the landlord again asserted that because Conason's tenancy began on Nov. 1, 2003, at which time she was allegedly overcharged, the tenant had until Oct. 31, 2007—four years later—to assert a rent overcharge claim. Conason did not assert her overcharge claim until April 2009, as a counterclaim to the landlord's non-payment proceeding.

The tenants, on the other hand, conceived of the four-year statute of limitations as working backward from the date that the overcharge claim was alleged. Thus, the rent stabilization base date was April 9, 2005, four years prior to the rent overcharge counterclaim. The tenants could only collect rent overcharges paid during that four-year period. However, because the rent charged on the base date resulted from fraud, that rent could not be used to calculate all subsequent lawful increases.

The majority ruled that the court's prior determinations in *Thornton v. Baron*, 5 NY3d 175 (2005) and *Grimm v. New York State Division of Housing and Community Renewal,* 15 NY3d 358 (2010), mandated a ruling in the tenants' favor. Ironically, Read had dissented in both of those cases.

Addressing *Thornton*, the majority observed that the Thornton majority had rejected the forward-looking application of the statute of limitations urged by the landlord in *Conason*:

> Significantly, the Thorntons did not sue the owner within 'four years of having first paid an allegedly unlawful rent,' as defendants and the dissent insist CPLR 213-a mandates. Indeed, they waited more than seven years.
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> And we at least implicitly rejected the owner's complaint that because the Thorntons' overcharge claim arose in 1992, we were flouting the Legislature's intent, when it enacted the RRRA [Rent Regulation Reform Act], to make sure that owners were not left forever potentially liable for overcharge claims; specifically, we declined to read the four-year limitations period in a way that would allow 'a landlord whose fraud remains undetected for four years—however willful or egregious the violations—[to], simply by virtue of having filed a registration statement, transform an illegal rent into a lawful assessment that would form the basis for all future rent increases' (citations omitted).

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The majority further noted that in *Thornton*, the dissent unsuccessfully asserted that the Thorntons' remedy was to challenge the rent established in their 1992 lease within four years, and that they had not done so. The majority in *Conason* then concluded that "[t]his, of course, is the same position espoused by the defendants and the dissent in this case."

Turning to *Grimm*, the majority wrote that the holding therein was that where, as here, there is indicia or a finding of fraud, the Division of Housing and Community Renewal (DHCR) or the court may go beyond the four-year statute of limitations to determine the lawfulness of the rent on the base date.

The majority concluded that "[i]n light of *Thornton* and *Grimm*, the Supreme Court in this case properly considered tenants' counterclaim alleging rent overcharges notwithstanding the expiration of the four-year statute of limitations to which such claims are generally subject" (citations omitted).

The Dissent

Pigott dissented, writing that *Thornton* and *Grimm* did not support the majority's interpretation of the four-year rule. Addressing *Thornton*, he wrote:

> The court expressly noted that '[o]nly one question is before us: How is the legal regulated rent of the apartment to be established?' The majority opinion did not decide the statute of limitations issue—the lawsuit was brought more than seven years after the first alleged overcharge—and indeed the dissent pointed out that the majority 'ignore[d] the four-year limitation' (internal citations omitted).

Pigott held that the court in *Grimm* failed to address the statute of limitations issue, and "'merely conclude[d] that DHCR acted arbitrarily in disregarding the nature of petitioner's allegations and in using a base date without, at a minimum, examining its own records to ascertain the reliability and the legality of the rent charged on the base date.'" He then turned to the language of CPLR 213-a itself, which states that "an action on a residential rent overcharge shall be commenced within four years of the first over-charge alleged…" He concluded that the majority had rewritten the statute:

> …so as to delete the first clause…with the result that 'Section 213-a merely limits a tenant's recovery to those overcharges occurring during the four-year period immediately preceding Conason's rent challenge.' In effect, the court has simply removed the statute of limitations from the statute. In doing so, it overlooks the well-established principal that, irrespective of whether the misconduct alleged is minor or heinous, 'actions are subject to the time limits created by the Legislature' and '[a]ny exception to be made to allow these types of claims to proceed outside of the applicable statute of limitations would be for the Legislature' to enact (internal citations omitted).

1. *Conason v. Megan Holding*, 2012 WL 5230640 (Sup Ct New York County).
2. *Conason v. Megan Holding*, 109 AD3d 744 (1st Dept 2013).