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Owner-Recovered Units

Panel Finds Law Imposes No Limit on Evictions
Warren A. Estis and Jeffrey Turkel, partners at Rosenberg Estis, review the First Department's recent ruling that the Rent Stabilization Law and the Rent Stabilization Code impose no limit on the number of apartments an individual owner can recover for purposes of owner use.

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In its Feb. 15th decision in *Pultz v. Economakis*, N.Y.L.J., Feb. 22, 2007, at 18 col. 1, a unanimous Appellate Division, First Department, ruled that the Rent Stabilization Law ("RSL") and the Rent Stabilization Code ("RSC") impose no limit on the number of apartments an individual owner can recover for purposes of owner use. The ruling, authored by Justice Luis A. Gonzalez, overturned two earlier orders by Supreme Court Justices Paul G. Feinman and Faviola A. Soto.

In the interest of full disclosure, the prevailing owner in the *Pultz v. Economakis* appeal was represented by Rosenberg & Estis.

The RSL and the RSC

Section 26-511(c)(9)(b) of the RSL provides that an owner may proceed directly in Civil Court "to recover possession of *one or more dwelling units* for his or her personal use and occupancy as his or her primary residence in the city of New York" (italics supplied). Section 2524.4(a)(3) of the RSC is to the same effect.

Over the years, owners have attempted to recover one or more apartments for their own use; in some instances, the owner occupied the rest of the building and was seeking to recover the last remaining apartments. As early as *Sobel v. Mauri*, N.Y.L.J., Dec. 12, 1984, at 10, col. 4 (A.T. 1st Dep't), the Appellate Term appeared to state the obvious: "[t]he Legislature has as yet placed no limitation on the amount of space a given owner may regain for personal use." See also, *Canino v. Fogel*, N.Y.L.J., Sept. 22, 1993, at 23, col. 3 (Civ. Ct., N.Y. Co.) aff'd N.Y.L.J., May 19, 1994, at 27, col. 4 (A.T. 1st Dep't); *Delavan v. Spirounias*, N.Y.L.J., Mar. 14, 2001, at 19, col. 5 (Civ. Ct., N.Y. Co.); *Wong v. Repass*, N.Y.L.J., Dec. 2, 1998, at 29, col. 2 (Civ. Ct., N.Y. Co.); *Tauber v. Ruscica*, N.Y.L.J., Oct. 14, 1987, at 14, col. 3 (Civ. Ct., N.Y. Co.).

'Pultz v. Economakis'

Alistair and Catherine Economakis own the 15-unit rent stabilized apartment building located at 47 East 3rd Street in Manhattan. Faced with cramped living quarters in the top floor of a Brooklyn brownstone, as well as a growing family, they decided to attempt to recover all 15 stabilized units in their building on owner occupancy grounds. Their ultimate goal was to turn the building into a single-family home. The RSL, which allows an owner to recover "one or more dwelling units" for such purposes, appeared to be no impediment.

Starting in late 2003, the owners began Civil Court eviction proceedings against six tenants whose leases had expired. In three of those Civil Court proceedings, Judge Lydia C. Lai, citing *Sobel v. Mauri*, preliminarily observed that "[t]here is no limit on how much space a particular owner may regain for personal use."

Five other tenants in the building, whose leases had yet to expire, moved in Supreme Court for a preliminary injunction to stop the owner from attempting to evict them in Civil Court. They simultaneously sought a declaration that the owners' plan violated the RSL and the RSC.

The tenants' argument was as follows: because recovery of all 15 units in the building would take the entire building out of rent stabilization, the owner was not really seeking to recover apartments based on owner use under RSC §2524.4(a)(3), but was in fact attempting to withdraw the building from the rental market under RSC §2524.5(a)(1). The latter section requires the owner to first obtain the approval of DHCR. Civil Court eviction proceedings, the tenants argued, were premature.

Justice Paul G. Feinman agreed, and preliminarily enjoined the owners from proceeding against the five tenants in Civil Court. In a June 20, 2005 order, Justice Feinman ruled that:

. . . a reading of the RSC which allows a landlord to recover all of the rental premises in a tenement building at one time based on plans to turn the entire building into a private home, would appear to be incompatible with the statute's intent to provide New York City residents with affordable and stable housing. Many, if not all, of the cases relied upon by the defendants refer to smaller brownstone buildings, the restoration of which to an owner-occupied single family home may be permitted. However, the statute cannot be read as permitting a tenement apartment building to be rid of an entire rent roll of tenants who, given today's rental market will never be able to find comparable housing in Manhattan, and perhaps not in the City.[1]

Both sides thereafter moved for summary judgment in the declaratory judgment action, which had been assigned to Justice Soto. On March 6, 2006, Justice Soto ruled in the tenants' favor, holding:

. . . the court finds that Unconsol. Law § 2524.5 governs the subject matter of this action. The building originally contained fifteen rent stabilized apartment units. It presently contains five occupied rent stabilized apartment units. [Sic.] *If defendants fully execute their recovery plan, the building will contain no rent stabilized apartment units. The net loss of fifteen rent stabilized apartment units clearly exacerbates the 'emergency' described in the Rent Stabilization Law - i.e., 'an acute shortage of dwellings which creates a special hardship to persons and families occupying rental housing.' That loss also clearly falls afoul of the directive in the Rent Stabilization Code 'that the policy herein expressed shall be implemented with due regard for the preservation of regulated rental housing.'*

'Malta v. Brown'

Two months later, in the unrelated case of *Malta v. Brown*,[2] Civil Court Judge Gerald Lebovits directly took on the issue of whether there was a statutory or regulatory limit on how many stabilized apartments an owner could recover for personal use. In a May 31, 2006 ruling, Judge Lebovits expressly rejected the rulings of Justices Feinman and Soto, and held:

The Rent Stabilization Law and Rent Stabilization Code are consistent with one another. The phrase 'one or more' apartments means a minimum of one and a maximum of all. The Legislature's use of . . . 'one or more' in RSC §2524.4(a)(3) and RSL §26-511(c)(9)(b) means that an owner who can prove good faith may take one, more than one, or all apartments.[3]

The First Department Rules

The owners in *Pultz v. Economakis* appealed to the Appellate Division, First Department, which issued its ruling last month. The Court first examined the relevant RSL and RSC provisions, and, like Judge Lebovits, found no ambiguity:

In this case, the clear and unambiguous provisions of both the Rent Stabilization Law and Code permit an owner to recover an unlimited number of stabilized units for personal use and occupancy without DHCR's approval, as long as good faith intent to use the premises as a primary residence is established. Rent Stabilization Law . . . § 26-511(c)(9)(b) provides that any rent stabilization code adopted by DHCR must 'provide[ ] that an owner shall not refuse to renew a lease except: (b) where he or she seeks to recover possession of one or more dwelling units *for his or her own personal use and occupancy as his or her primary residence in the city of New York. . .' (emphasis added). Notably, nothing in this subdivision may be read to require DHCR approval before defendants are entitled to recover 'one or more' of a building's apartments for personal use.*

After ruling that the Appellate Term, First Department's 1984 ruling in *Sobel* correctly held that there was no limit to the number of apartments an owner could obtain for personal use, the Appellate Division addressed the tenants' argument that the recovery of multiple apartments somehow violated the intent and purpose of the RSL and the RSC:

To the extent Judges Feinman and Soto may have relied on the policy underling the Rent Stabilization Law to preserve the supply of regulated housing in New York City as a basis for rejecting the Sobel *holding, this too was error. Although both courts correctly summarized the legislative policy, they overlooked that the same legislative body also enacted a provision expressly permitting an owner to recover dwelling units for personal use and occupancy, and did so without imposing any limitation on the number of units that may be recovered. As defendants correctly note, the Legislature has proven perfectly capable of drafting language such as 'one or more, but not all,' if that were the intent of the lawmakers . . . The Legislature's failure to include any limitation in the Rent Stabilization Law is powerful evidence that no such limit was intended.*

The Court concluded:

In essence, plaintiffs' argument is that an express right granted to owners under the Rent Stabilization Law and Code - the right to recover 'one or more dwelling units' for personal use without DHCR approval - should not be recognized in this case because the recovery of all of the units in the building would undermine the rent stabilization system. We disagree because the Legislature has determined that an owner's need to recover units for personal use and occupancy as a primary residence is a legitimate exception to the rent stabilization scheme. Plaintiffs' argument that a restriction on the number of units that may be recovered for personal use is more consistent with the rent stabilization scheme is more appropriately directed to the State Legislature.

The tenants have indicated that they will appeal to the Court of Appeals. Whether the Appellate Division, or the Court of Appeals itself, will grant leave to appeal remains to be seen.

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Endnotes:

1. 8 Misc.3d 1022 (A), 803 N.Y.S.2d 20 (Sup. Ct., N.Y. Co. 2005).

2. 12 Misc.3d 1164 (A), 819 N.Y.S.2d 210 (Civ. Ct., N.Y. Co. 2006).

3. Slip. Op. at *6.
