Rent Stabilization

When Will 'Public Policy' Void a Settlement?

BY WARREN A. ESTIS AND JEFFREY TURKEL

Landlords and their rent regulated tenants frequently litigate disputes concerning possession, status, rents and services. Often these disputes are settled by a stipulation, "so ordered" or otherwise. In two recent cases, however, *Riverside Syndicate, Inc. v. Munroe*[1] and *Georgia Properties, Inc. v. Dalsimer*,[2] the Appellate Division, First Department held that the settlements therein were, in whole or in part, void as against public policy.

For purposes of full disclosure, the authors note that Rosenberg & Estis, P.C. represented the prevailing landlords in *Riverside* and *Georgia Properties*.

Regulatory Provisions

Section 2520.13 of the Rent Stabilization Code provides that tenants can only waive the benefits of the Rent Stabilization Law under certain circumstances. The provision, captioned "Waiver of Benefit Void," states in relevant part:

> An agreement by the tenant to waive the benefit of any provision of the RSL or this Code is void; provided, however, that based upon a negotiated settlement between the parties and with the approval of DHCR, or a court of competent jurisdiction where a tenant is represented by counsel, a tenant may withdraw, with prejudice, any complaint pending before the DHCR.

Section 2200.15 of the Rent and Eviction Regulations, applicable to rent controlled apartments, similarly provides:

> An agreement by the tenant to waive the benefits of any provision of the Rent Law or these regulations is void.

Prior Case Law

Notwithstanding the provisions set forth above, courts have enforced certain types of settlements involving tenant waivers. In *Merwest Realty Corp. v. Prager*,[3] a tenant in substantial arrears agreed to vacate her apartment for $10,000. She later reneged on the deal. Civil Court dismissed the landlord's holdover proceeding,[4] and Appellate Term affirmed.[5] The Appellate Division, however, upheld the stipulation and revived the holdover proceeding, stating:

> It is well settled that, unless public policy is affronted, the courts favor and encourage parties to civil disputes to fashion stipulations resolving such disputes, and that they may stipulate away statutory or even constitutional rights [citation omitted]. The [anti-waiver] provision of the Rent Control Law, while intended to protect the rights of a rent-controlled tenant, does not prohibit a tenant from agreeing as here, where there is no evidence of bad faith or overreaching by the landlord, to surrender possession of the apartment and resolve incidental differences...."[6]

See also, *Eckstein v. New York Univ.*, 279 A.D.2d 208, 705 N.Y.S.2d 51(1st Dep't 2000), mot. for lv. denied, 95 N.Y.2d 760, 714 N.Y.S.2d 710 (2000); *Kent v. Bedford Apts. Co.*, 237 A.D.2d 140, 654 N.Y.S.2d 143 (1st Dep't 1997).

'Drucker v. Mauro'

The case law concerning the enforceability of agreements under rent stabilization and rent control took a sharp turn in the First Department's April 20, 2006 decision in *Drucker v. Mauro*.[7] *Drucker* concerned the validity of an agreement that settled a landlord-tenant dispute by giving the tenant perpetual two-year renewal leases at increases in accordance with Rent Guidelines Board percentages, but also allowed the landlord to initially raise the rent above stabilization levels. The Appellate Division majority, holding that "the RSL [must] be applied impartially,"[8] struck down the agreement, even though it was primarily advantageous to the tenant.

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RENT REGULATION

Practitioners seeking to settle landlord-tenant disputes involving rent regulated apartments are advised to carefully review 'Drucker,' 'Riverside,' and 'Georgia Properties,' to insure that their settlement agreements will withstand future challenges.

'Riverside v. Munroe'

The first post-*Drucker* case to reach the Appellate Division was *Riverside v. Munroe*. In *Riverside*, the parties settled a 1995 illegal sublet proceeding, involving apartment 10A at 155 Riverside Drive, by allowing the defendants to become the tenants of record. The agreement of the parties, which was ultimately memorialized in a Consent Judgment, illegally raised the rent for 10A, and contained a provision that the landlord could not seek to evict the tenants from apartments 10B and 10F—which they also rented—based on non-primary residence. In 2004, the landlord commenced a declaratory judgment action to vacate the Consent Judgment on the grounds that (1) an owner's waiver of the right to recover an apartment based on non-primary residence was void as against public policy, and (2) the Consent Judgment violated section 2520.13 of the Rent Stabilization Code.

Supreme Court (Gische, J.) dismissed the landlord's complaint, holding that the Consent Judgment was not contrary to the RSL in that it did not "remov[e] the apartment[s] from rent stabilization." Supreme Court also held that the landlord did not waive its rights because there is nothing under the RSL that compels a landlord to seek to evict a tenant based on non-primary residence. Finally, Justice Gische held that the Consent Judgment could not be undone, because under "principles of equity and estoppel" the "tenants relied upon the agreement and to unravel it now would injure them because they could not be put back into the position they were in at the time the agreement was made."

On appeal, the First Department unanimously reversed, holding:

> Because the consent judgment violates public policy by waiving benefits of the Rent Stabilization Law (notwithstanding that it does so to the tenants' benefit in this instance), it is unenforceable (see *Drucker v. Mauro*, 30 A.D.3d 37 [2006], appeal dismissed 7 N.Y.3d 844 [2006]). Since the consent judgment's main objective was illegal, it is void in its entirety (see *Rose v. Elias*, 177 A.D.2d 415, 416 [1991]). Further, given that the landlord and the tenants are in pari delicto, and the tenants (who seek to keep the consent judgment in force) have already reaped substantial benefits from it (including more than a decade of enjoyment of their renovations to the apartments), we leave the parties where we find them, and do not place any conditions on our invalidation of the consent judgment..."

'Georgia v. Dalsimer'

Two weeks after deciding *Riverside*, the First Department decided *Georgia Properties, Inc. v. Dalsimer*. In *Georgia Properties*, the landlord in 2000 sought to evict the tenant from rent controlled apartment 19A at 275 Central Park West on grounds of non-primary residence, asserting that the tenant and her husband used 19A for business purposes, but primarily lived in apartment 18D in the same building. In late 2000, the parties enter into a stipulation, later "so ordered" by Civil Court, in which they agreed that apartment 19A would be

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permanently deregulated based on the tenant's admitted non-primary residence, but that the tenant could continue to rent 19A for business purposes at a market rate. The stipulation also provided, however, that the landlord would permanently waive its right to recover apartment 18D based on luxury deregulation.

The landlord commenced an action in 2004 seeking a declaration that the so ordered stipulation was void as against public policy. Supreme Court (Kapnick, J.) granted the tenants' motion to dismiss, holding, in relevant part, that the provision pertaining to 18D was not void as against public policy. The Court held that rather than violating public policy, the stipulation "had the effect keeping an apartment which might otherwise have been deregulated within the regulatory scheme."

The First Department thereafter reversed. Because the tenant had made a pre-answer motion to dismiss, and because the landlord had not cross-moved for summary judgment, the Court was limited to reinstating the complaint. The Court observed, however, that the luxury deregulation waiver in the so ordered stipulation was void as against public policy, and that the entire stipulation might well be unenforceable:

> We have previously held that 'an agreement in purported or actual settlement of a landlord-tenant dispute which waives the benefit of a statutory protection is unenforceable as a matter of public policy, even if it benefits the tenant' (*Drucker v. Mauro*, 30 A.D.3d 37, 38 [2006], appeal dismissed 7 N.Y.3d 844 [2006]. Such agreements undermine the 'viability of the rent regulatory system,' and we have consistently prohibited 'landlords and tenants from making private agreements to effectively deregulate applicable housing units' (*390 W. End Assoc. v. Harel*, 298 A.D.2d 11, 16 [2002]). Deregulation of apartments is only 'available through regular, officially authorized means [and] not by private compact' (*Draper v. Georgia Props., Inc.*, 94 N.Y.2d 809, 811 [1999] [citation omitted]).

The Court concluded:

> Applying these principles to this case, plaintiff correctly argues that the portion of the agreement pertaining to apartment 18D is void as against public policy. However, it does not follow that the portion of the agreement pertaining to apartment 19A is legal, enforceable and severable. An agreement to waive the provisions of the Rent Stabilization Law or the RSC is void as against public policy. Where the main objective of an agreement is illegal, courts will not sever and enforce incidental legal clauses [internal citations omitted].

Practitioners seeking to settle landlord-tenant disputes involving rent regulated apartments are advised to carefully review *Drucker*, *Riverside* and *Georgia Properties* to insure that their settlement agreements will withstand future challenges.

1. N.Y.L.J., April 6, 2007, at 31, col. 4 (1st Dep't).
2. N.Y.L.J., April 19, 2007, at 29, col. 6 (1st Dep't).
3. 264 A.D.2d 313, 694 N.Y.S.2d 38 (1st Dep't 1999).
4. 173 Misc.2d 868, 662 N.Y.S.2d 405 (N.Y.C. Civ. Ct. 1997).
5. 177 Misc.2d 956 679 N.Y.S.2d 519 (App. T. 1st Dep't 1998).
6. 264 A.D.2d at 313-14.
7. 30 A.D.3d 37, 814 N.Y.S.2d 43 (1st Dep't 2006).
8. 30 A.D.3d at 41.