

LANDLORD-TENANT

Putative Class Actions For Rent Overcharges



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As practitioners in this area of the law are surely aware, there have in recent years been a spate of putative class action lawsuits commenced by residential tenants against their landlords, typically on behalf of both themselves and a proposed class of current and former tenants, claiming that their apartments were improperly deregulated and seeking rent overcharge damages. There are, however, certain standards that must be met in order for a court to “certify” a class under CPLR Article 9. In a recent decision of Justice Erika M. Edwards of Supreme Court, New York County in *Maddicks v. Big City Prop.*, 2017 N.Y. Slip Op. 32385(U) (Sup. Ct. N.Y. County Nov. 16, 2017), the court, in dismissing the tenants’ putative class action, explained the standards which must be complied with and

found that in the case before it, the tenants had not satisfied them.

‘Maddicks’

The facts as explained by the court in *Maddicks* were as follows. The plaintiffs were the tenants of apartments in 20 different buildings, each owned by different limited liability companies which were named as defendants. The class action complaint alleged that the buildings were part of a portfolio—the “Big City Portfolio”—managed by the same company. The complaint requested both declaratory and injunctive relief claiming that the subject apartments were improperly deregulated, and also sought damages for alleged rent overcharges. The proposed class included the current and former tenants of the 20 buildings owned by the various defendants.

The defendants moved to dismiss the complaint under CPLR 3211. They argued that the plaintiffs’ attempt to bring the action as a class action failed as a matter of law because,

among other reasons: (1) the defendants were all unrelated, separate entities and that the plaintiffs were improperly attempting to impute the alleged wrongful acts of one defendant against another without demonstrating how the entities are affiliated or legally intertwined; (2) the buildings had different property owners; and (3) the claims were improper for a class action because they were fact-specific and required individual case-specific analysis.

The court granted the motion and dismissed the complaint.

No Basis for Class Action Relief

The court observed that under First Department precedent, a motion to dismiss may be made prior to a motion to determine the propriety of the class under CPLR 902 “where it appears conclusively from the complaint and from the affidavits that there was as a matter of law no basis for the class action relief.”

The court further observed that it has “broad discretion” to determine

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whether the putative class meets the standards for class certification based on a review of the criteria set forth in CPLR 901(a). The court stated that under the statute, the prerequisites for class certification are “1) the class is so numerous that joinder of all members is impracticable; 2) there are questions of law or fact common to the class which predominate over any questions affecting only individual members; 3) the claims or defenses of the representative parties are typical of the class; 4) the representative parties will fairly and adequately protect the interests of the class; and 5) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.”

The court then went on to explain why the complaint did not satisfy the standards for class certification. First, the court found that “the questions of law or fact common to the class do not predominate over questions affecting only individual members.” In this regard, the court explained the plaintiffs “failed to properly assert how the defendants are factually or legally related or bound in this action” and that the allegations that all the properties were part of the “Big City Portfolio” was insufficient. The court further observed:

“Here, plaintiffs attempt to join former and current tenants of several different properties, owned by separate and distinct companies, which are based on different theories of recovery, involving separate and

distinct law and facts. Such claims are inappropriate for a class action.”

The court also found that each of the plaintiffs’ claims “requires fact-specific analysis which precludes class certification.” In so finding, the court observed that “[t]here are different buildings involved, different owners, different dates when the owners acquired the property, different prior owners, different registration periods

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and since there are different theories of recovery, each theory requires different defenses and evidence.” As such, the court concluded that:

“Therefore, each theory of recovery or each owner may require different questions of law or fact which affect the individual members of the class associated with that owner and/or theory. Furthermore, since there are so many different entities and theories, each claim or defense may not be typical of the class which is necessary for class certification.”

Finally, the court found that in the case before it, “a class action cannot be determined to be superior to other available methods for the fair and efficient adjudication of the controversy.” The court explained:

“to proceed as a class, plaintiffs must waive their right to seek treble damages, since treble damages are penalties which are precluded in class actions, or exercise their right to opt out. Therefore, individual class members may wish to pursue administrative remedies under the Rent Stabilization Code in a Division of Housing and Community Renewal (DHCR) proceeding or individual suit. Since the class representatives may not reflect the interests of the class based on the different theories a class action may not be the superior manner in which to bring plaintiffs’ claims.”

Conclusion

Justice Edwards’ decision in *Maddicks* provides an excellent primer as to which types of rent overcharge matters may be appropriate for bringing as a class action, and certainly not all such matters will qualify. As the decision makes clear, the question of whether a matter will satisfy the above-described standards for class certification is a fact intensive analysis and will depend on the circumstances presented in each case.