

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,  
FIRST DEPARTMENT

Wise v. 1614 Madison Partners, LLC

2023 NY Slip Op 01495 (N.Y. Ct. App. 2023) · No. Appeal Nos. 17547-17548; Case Nos. 2022-04163, 2022-05634; Index No. 154592/22 · Decided March 21, 2023

SUMMARY

The Appellate Division, First Department affirmed orders denying a motion to dismiss a putative class action alleging rent overcharges based on manipulation of initial legal regulated rents through concessions. The court also affirmed class certification while limiting the class period to tenants residing in or formerly residing at the premises on or after May 27, 2018. It held that the former four-year statute of limitations under CPLR 213-a governed the claims.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                       |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, First Department                                                                                                                                                                                                                                          |
| WRITING FOR THE COURT | Kapnick, J.P.; Kern, J.; Gesmer, J.; Moulton, J.; Higgitt, J.                                                                                                                                                                                                                                                         |
| JURISDICTION          | New York                                                                                                                                                                                                                                                                                                              |
| DECIDED               | March 21, 2023                                                                                                                                                                                                                                                                                                        |
| DOCKET                | Appeal Nos. 17547-17548; Case Nos. 2022-04163, 2022-05634; Index No. 154592/22                                                                                                                                                                                                                                        |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | Plaintiff appealed and defendant cross-appealed from Supreme Court orders denying defendant's motion to dismiss a putative class action alleging rent overcharges and related declaratory relief, and certifying a class limited to tenants who resided or formerly resided at the premises on or after May 27, 2018. |
| STANDARD OF REVIEW    | The denial of a motion to dismiss was reviewed under the CPLR 3211 standard; Supreme Court's class-certification and class-period determination were reviewed for abuse of discretion or whether the court providently exercised its discretion.                                                                      |
| PRECEDENTIAL VALUE    | published appellate decision                                                                                                                                                                                                                                                                                          |
|                       |                                                                                                                                                                                                                                                                                                                       |

**PARTIES**

1614 Madison Partners, LLC, Brett Wise v. Brett Wise, 1614 Madison Partners, LLC

**TOPICS**[landlord tenant](#)[class actions](#)[motions to dismiss](#)[statute of limitations](#)[appellate procedure](#)**PRACTICE AREAS**[landlord-tenant law](#)[class actions](#)[civil procedure](#)[appellate procedure](#)**QUESTIONS PRESENTED**

1. Whether the complaint adequately alleged that defendant improperly manipulated initial legal regulated rents through purported concessions, thereby stating rent-overcharge claims.
2. Whether Supreme Court properly declined to consider defendant's untimely reply papers.
3. Whether documents submitted with defendant's reply utterly refuted the complaint's allegations under CPLR 3211(a)(1).
4. Whether the class period for the rent-overcharge claims properly commenced on May 27, 2018, rather than May 27, 2016.
5. Whether the four-year statute of limitations under former CPLR 213-a governed rent-overcharge claims accruing before enactment of the Housing Stability and Tenant Protection Act.

**HOLDINGS**

1. The complaint adequately alleged that defendant improperly manipulated apartments' initial legal regulated rents through the offering of concessions, so denial of the motion to dismiss was proper.
2. Supreme Court properly exercised its discretion to decline consideration of defendant's untimely reply papers.
3. Even if considered, the documents submitted on reply did not utterly refute the allegations that the purported construction concessions were part of a fraudulent scheme to register inflated initial rents.
4. The class period properly commenced on May 27, 2018, and the four-year limitations period under former CPLR 213-a governed rent-overcharge claims accruing before enactment of the Housing Stability and Tenant Protection Act.

**FACTUAL BACKGROUND**

The complaint alleged that defendant manipulated the initial legal regulated rents of apartments in the building by offering purported concessions to tenants. Plaintiff alleged that some purported construction concessions were not reimbursements for tenant inconvenience but instead formed part of a fraudulent scheme to register initially charged rents at inflated amounts. The action sought recovery for rent overcharges and related declaratory relief on behalf of a tenant class.

**PROCEDURAL HISTORY**

Supreme Court, New York County, denied defendant's motion to dismiss and granted plaintiff's motion for class certification while limiting the class period to tenants residing at the premises on or after May 27, 2018. The Appellate Division unanimously affirmed both orders, without costs.

## DISPOSITION

affirmed

## CASES CITED

- Chernett v. Spruce 1209, LLC, 200 A.D.3d 596, 597 (1st Dep't 2021)
- Bacchus v. Bronx Lebanon Hosp. Ctr., 192 A.D.3d 553, 554 (1st Dep't 2021)
- Goshen v. Mut. Life Ins. Co. of N.Y., 98 N.Y.2d 314, 326 (2002)
- Flynn v. Red Apple 670 Pac. St., LLC, 200 A.D.3d 607 (1st Dep't 2021)
- Matter of Century Operating Corp. v. Popolizio, 60 N.Y.2d 483 (1983)
- Matter of Regina Metro. Co., LLC v. New York State Div. of Hous. & Community Renewal, 35 N.Y.3d 332, 363 (2020)
- Austin v. 25 Grove St. LLC, 202 A.D.3d 429, 430 (1st Dep't 2022)

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