

COURT OF APPEALS OF THE STATE OF NEW YORK

Riverside Syndicate, Inc. v. Munroe

10 N.Y.3d 18 (2008) · Decided February 7, 2008

SUMMARY

The New York Court of Appeals held that an agreement allowing tenants to pay an illegal rent for a rent-stabilized apartment in exchange for the landlord's waiver of primary-residence requirements was void and unenforceable by either party. The court rejected the tenants' arguments that the agreement was a valid settlement or barred by the statute of limitations, and affirmed the declaratory judgment invalidating it.

CASE DETAILS

COURT	Court of Appeals of the State of New York
WRITING FOR THE COURT	Smith, J.; Chief Judge Kaye; Judge Ciparick; Judge Graffeo; Judge Read; Judge Pigott; Judge Jones
JURISDICTION	New York
DECIDED	February 7, 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	The tenants appealed from an Appellate Division order reversing Supreme Court's grant of summary judgment to the tenants and granting summary judgment to the landlord in a declaratory-judgment action concerning the validity of a rent-stabilized tenancy agreement.
STANDARD OF REVIEW	Summary judgment review; the Court of Appeals reviewed the Appellate Division's grant of summary judgment and declaratory judgment.
PRECEDENTIAL VALUE	Published precedential opinion of the New York Court of Appeals.
PARTIES	Victoria Munroe, Eric Saltzman v. Riverside Syndicate, Inc.

TOPICS

- landlord tenant
- contracts
- statutory interpretation
- declaratory judgment
- real estate

PRACTICE AREAS

- landlord-tenant law
- rent stabilization
- contract law
- declaratory judgment

QUESTIONS PRESENTED

1. Whether an agreement permitting tenants to pay an illegal rent for rent-stabilized apartments in exchange for the landlord's agreement not to enforce the primary-residence requirement is void and unenforceable.
2. Whether the negotiated-settlement exception in Rent Stabilization Code § 2520.13 validated the agreement.
3. Whether the six-year limitations period for contractual obligations barred the landlord's declaratory-judgment action.
4. Whether the agreement could be relied upon by either party after being declared void.

HOLDINGS

1. An agreement by tenants to pay an illegal rent for a rent-stabilized apartment in exchange for the landlord's agreement to permit use as a second home and not enforce the primary-residence requirement is void and cannot be enforced by either party.
2. The negotiated-settlement exception in Rent Stabilization Code § 2520.13 does not apply where the agreement is not a bona fide compromise of a dispute concerning what the law permits and instead seeks to achieve conduct the law undisputedly prohibits.
3. The six-year statute of limitations for an action upon a contractual obligation does not make an agreement that was void at inception valid by the passage of time, and it did not bar this declaratory-judgment action on the facts presented.
4. The agreement is void as to both parties, and neither party may rely on it.

KEY QUOTATIONS

“We hold that an agreement by tenants to pay an illegal rent for a rent-stabilized apartment, in exchange for an agreement by the landlord to let the tenants use the apartment as a second home, is void and cannot be enforced by either party.” (21)

“The agreement is void as to both parties, and neither party is entitled to rely on it.” (24)

FACTUAL BACKGROUND

The tenants occupied three Manhattan apartments subject to rent stabilization. In a 1996 so-ordered stipulation, the landlord agreed to recognize them as lawful rent-stabilized tenants at a monthly rent of \$2,000, despite a substantially lower legal maximum, and agreed not to enforce the primary-residence requirement. The apartments were later deregulated, and after the landlord commenced proceedings based on the tenants' nonprimary residence, the landlord sought a declaration that the 1996 agreement violated public policy and was void.

PROCEDURAL HISTORY

The landlord initially sued to evict the tenants, and the parties entered a 1996 so-ordered stipulation recognizing the tenants as rent-stabilized tenants at a rent substantially above the legal maximum and permitting occupancy

regardless of primary residence. After the apartments were deregulated and the landlord later commenced eviction proceedings based on nonprimary residence, the landlord brought this action in 2004 seeking a declaration that the 1996 agreement was void. Supreme Court granted summary judgment to the tenants; the Appellate Division reversed, declared the agreement null and void, and the Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Park Towers S. Co. v. Universal Attractions, 274 A.D.2d 312 (1st Dep't 2000)
- Rima 106 v. Alvarez, 257 A.D.2d 201 (1st Dep't 1999)
- Pacchiana v. Pacchiana, 94 A.D.2d 721 (2d Dep't 1983)

OPINION

SMITH, J.

10 N.Y.3d 18 (2008) 882 N.E.2d 875 853 N.Y.S.2d 263 RIVERSIDE SYNDICATE, INC., Respondent, v. VICTORIA MUNROE et al., Appellants. Court of Appeals of the State of New York. Argued January 9, 2008. Decided February 7, 2008. *19 Emery Celli Brinckerhoff & Abady LLP, New York City (Eric Hecker and Richard D. Emery of counsel), and Vernon & Ginsburg, LLP (Darryl M. Vernon of counsel), for appellants. *20 Rosenberg & Estis, P.C., New York City (Jeffrey Turkel and Gary M. Rosenberg of counsel), for respondent.

Chief Judge KAYE and Judges CIPARICK, GRAFFEO, READ, PIGOTT and JONES concur. *21
OPINION OF THE COURT SMITH, J. We hold that an agreement by tenants to pay an illegal rent for a rent-stabilized apartment, in exchange for an agreement by the landlord to let the tenants use the apartment as a second home, is void and cannot be enforced by either party. Facts and Procedural History The tenants, Victoria Munroe and Eric Saltzman, rented three apartments (apparently combined into one) on Riverside Drive in Manhattan.

All three apartments were subject to the rent stabilization laws. Originally, the tenants subleased one of the three from another tenant, and the landlord sued to evict them, claiming that the sublease was illegal. This eviction proceeding was settled by the agreement now at issue, a so-ordered stipulation between the landlord and the tenants entered into in 1996.

The parties agreed that the tenants "shall be recognized as the lawful, rent stabilized legal tenants of the subject premises at a monthly rental rate of \$2,000.00." This was far in excess of the maximum rent allowed by the rent stabilization laws: The landlord's brief in this Court says that the maximum legal rent would have been \$1,325, and the tenants' brief suggests a lower figure.

The agreement said that the tenants "waive all right to challenge the legality of the rent" and that "[r]egardless of [their] primary residence" the tenants "may remain as the rent stabilized tenants." The agreement also said that, if the apartments were deregulated, the landlord would offer a renewal lease to the tenants every two years, at a rent increase of no more than 8%.

In 2000, the apartments were deregulated, without objection from the tenants. Apparently, the parties continued to comply with the 1996 agreement until 2003. In that year, the landlord began eviction proceedings based on the claim that the tenants were not using the apartments as their primary residence. There was a brief *22 truce, and the proceedings were dismissed without prejudice, but in 2004 the landlord began the present action.

It seeks a declaratory judgment that the 1996 agreement violates public policy and is void. Supreme Court granted summary judgment to the tenants, but the Appellate Division reversed and granted summary judgment to the landlord, declaring the agreement "null, void, and of no force or effect" (39 AD3d 256, 256 [1st Dept 2007]).

The Appellate Division granted the tenants leave to appeal, and we now affirm the Appellate Division's order. Discussion Rent Stabilization Code (RSC) (9 NYCRR) § 2520.13 says: "An agreement by the tenant to waive the benefit of any provision of the RSL [Rent Stabilization Law] or this Code is void; provided, however, that based upon a negotiated settlement between the parties and with the approval of the DHCR [Division of Housing and Community Renewal], or a court of competent jurisdiction, or where a tenant is represented by counsel, a tenant may withdraw, with prejudice, any complaint pending before the DHCR."

The application of this regulation to this case seems uncomplicated. The agreement is, on its face, one to "waive the benefit" of rent stabilization, and is therefore void. It is not an agreement to withdraw a "complaint pending before the DHCR," and therefore the exception in the regulation does not apply.

In exchange for an illegal rent, the landlord agreed, among other things, not to enforce its right under RSC § 2524.4 (c) to "recover possession" of a "housing accommodation... not occupied by the tenant... as his or her primary residence."

As the Appellate Division has repeatedly held, an agreement of this kind is not enforceable by the tenant (*Park Towers S. Co. v Universal Attractions*, 274 AD2d 312 [1st Dept 2000]; *Rima 106 v Alvarez*, 257 AD2d 201 [1st Dept 1999]). Such an agreement allows a tenant who already has one home, and who is able to pay more than the legal rent for a second one, to use the law as a means of getting that second home in perpetuity at a bargain price.

As Justice Wallach said in *Rima*, to countenance such an arrangement "would violate the fundamental policies and purposes of the statutory rent regulation scheme" (257 AD2d at 204).

*23 Seeking to defend the agreement, the tenants make essentially three arguments: that, on the

facts of this case, enforcement of the agreement would violate no public policy; that the "negotiated settlement" exception to RSC § 2520.13 should apply here; and that the landlord's claim is barred by the statute of limitations.

All three arguments lack merit. The basis for the tenants' public policy argument is their assertion that, if the 1996 eviction proceeding had not been settled by the agreement in suit, only two outcomes were possible: either the tenants would have remained in the apartments at the legal rent, or they would have been evicted and the apartments would have been deregulated.

Neither result, the tenants say, would serve the policy of the rent stabilization laws any better than the compromise result the parties reached. The assertion on which this argument rests is dubious, but even assuming the assertion is true, the conclusion is wrong. It is the policy of the rent stabilization laws that apartments should either be rented at no more than the legal maximum or deregulated.

Deregulation, when the conditions for it are met, serves public policy by increasing the availability of housing on the open market. Agreements like the one at issue here distort the market without benefitting the people the rent stabilization laws were designed to protect.

The tenants also argue that settlements, especially court-approved settlements, should be encouraged, and therefore the exception in RSC § 2520.13 should be read broadly. Though the exception applies only to the withdrawal of a "complaint pending before the DHCR," the tenants say that the absence of any such complaint in this case is a meaningless formality; the tenants could easily have filed such a complaint, and withdrawn it as part of the settlement.

Thus, the tenants argue in substance, this case is within the spirit though not the letter of the exception. We disagree. We find the agreement to be within neither the letter nor the spirit of the law, because it was not a bona fide settlement of the parties' dispute.

The argument for upholding the agreement would be stronger if, in 1996, the parties had had a dispute about the amount of the legal maximum rent, and had compromised at a figure above the tenants' and below the landlord's. But the "compromise" in this case put the rent roughly 50% higher than the highest rent the landlord could have demanded.

The obvious purpose of the settlement was not to resolve a dispute about what the law permitted, but to achieve something the law undisputedly did not and does not permit. *24 Finally, the tenants argue that, since the agreement was made in 1996, this action, brought in 2004, is barred by the six year statute of limitations provided by CPLR 213 (2) for "an action upon a contractual obligation or liability."

This argument misconceives the nature of a statute of limitations; it does not make an agreement that was void at its inception valid by the mere passage of time (*Pacchiana v Pacchiana*, 94 AD2d

721 [2d Dept 1983]). This action is not one "upon a contractual obligation or liability," but one to declare that no valid contractual obligations ever existed.

We thus conclude that the Appellate Division correctly granted the landlord's request for a declaratory judgment that the agreement in suit is void. One part of the Appellate Division's opinion, however, may cause confusion; that court said that it would "leave the parties as we find them, and... not place any conditions on our invalidation of the consent judgment," observing that "the landlord and the tenants are in *pari delicto*" and that the tenants "have already reaped substantial benefits" from the agreement (39 AD3d at 257).

We agree that no "conditions" on the judgment declaring the agreement void are necessary, but that does not mean that only the landlord may benefit from the judgment. The agreement is void as to both parties, and neither party is entitled to rely on it.

The tenants may well have a strong claim, subject to any statute of limitations defense that may exist, to recover the excess rent they paid; they may also have a strong claim to rescind the deregulation of the apartments, if that deregulation was the result of the illegal agreement.

We do not prejudge these claims except to say that, having successfully argued that the agreement was void at inception, the landlord may not invoke the agreement in its own defense. Accordingly, the order of the Appellate Division should be affirmed with costs.

The certified question is unnecessary, and need not be answered. Order affirmed, etc.