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Landlord wins latest battle in war over affordable city living

By MAGGIE HAWRYLUK

The dismissal of a lawsuit against the owners of the massive Stuyvesant Town/Peter Cooper Village residential complex allowed building owners to breathe a tentative sigh of relief, but legal experts agree that the battle between tenants and landlords is far from over.

"Anytime you are dealing with a rent stabilized property and think about deregulating, you will get the attention of the tenants and they will fight," said Adam Gilbert, partner at Nixon Peabody LLP.

Judge Richard Lowe dismissed the suit Stuy Town tenants filed against the former and current owners, MetLife and Tishman Speyer, late last month as part of their ongoing battle to protect rents in one of the city's biggest regulated complexes.

Tishman Speyer bought the property last year with partner, BlackRock Realty, for a record-shattering \$5.4 billion on the assumption that it would carry on the practice of raising rents at the 11,000-unit complex to market rates over time.

The suit claimed that some 3,000 residents had been overcharged for rent while the owners received J-51 tax abatements, which the tenants claimed should have meant market-value units remain stabilized until the abatements expired.

Lawyers for the defendants stated that the residents of the deregulated units signed leases agreeing to the market-value prices and that nothing had been taken away from them. They also argued that the owners' receipt of J-51 benefits had no correlation with whether or not the units should be rent-stabilized.

"It was a fairly easy decision," according to Gilbert, who added, "The law was pretty clear. The statute makes clear that for J-51 to trigger rent stabilization, it has to be the reason why the stabilization started. It was pretty clear that the rent stabilization was established before J-51."

Dan Ansell, of Greenberg Traurig, who represented Met Life both in the purchase by Tishman and in the tenant litigation, declined to comment.

By definition, a rent-stabilized apartment is an apartment in a building of six or more units built between Feb. 1, 1947 and Jan. 1, 1974. Furthermore, buildings with three or more apartments built or extensively renovated since 1974 with tax benefits can also be stabilized, but generally only while the benefits continue, according to the New York City Rent Guidelines Board.

These apartments can be deregulated after a vacancy if the legal rent exceeds \$2,000 or if the building is being converted to a co-op. Also, according to the New York City Rent Guidelines Board, a tenant of a rent-stabilized apartment with a monthly rent higher than \$2,000 whose annual family income exceeds \$175,000 for two consecutive years is

no longer entitled to rent stabilization, and the apartment may be deregulated.

With the Stuy Town case dismissal, some do not see a bright future for the complex's affordability, though experts predict tenants will try to appeal.

"This ruling is one more nail in the coffin for the tremendous affordable housing resource that Stuy Town and Peter Cooper Village were," said Jenny Laurie, director of the Metropolitan Council on Housing, an organization dedicated to preserving and expanding New York City's supply of affordable housing. "It's unfortunate that the city can't force them to keep Stuy Town affordable."

C. Jaye Berger, a Manhattan attorney who specializes in real estate and construction law, said that not all hope is lost for affordable housing if tenants unite.

"The owners worry about their financial clout rather than the tenant's smaller financial clout," Berger said. "The tenants need to be able to get organized and create a cohesive group with legal counsel."

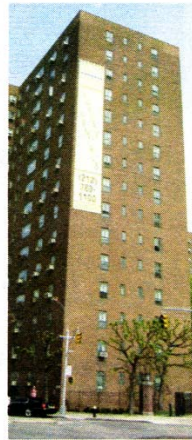
Stuy Town isn't the only case that experts are paying attention. The owners of Sheffield 57, the luxury condo conversion underway at the former rental tower at 322 West 57th Street, have appealed a ruling issued earlier this year that sided with tenants who resisted efforts to get out and allow a full conversion to take place.

The Sheffield's owners had been trying to empty the property to make way for construction by allowing residents' leases to expire. But the tenant group delayed eviction proceedings through appeals until the conversion plan's state approval process reached benchmarks past which tenant eviction is barred.

The court sided with the tenants despite protestations from the building's owners - a partnership between Kent Swig, Yair Levy, and Serge Hoyda - that they were illegal occupants by the time the conversion's state approvals were granted.

According to Jamie Heiberger-Jacobson, of Heiberger & Associates, P.C.,

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Stuyvesant Town tenants lost latest legal battle.

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New York City housing court ruling focused on the Martin Act, a law that prevents eviction after a conversion has received attorney general approval.

"Prior to the Sheffield, the situation was that, until the plan was accepted by the attorney general, [tenants] had life rights," said Heiberger. "The new ruling, which will be appealed and probably overturned, says that tenants have rights when the plan is submitted."

Lawyer Adam Leitman Bailey, told REW at the time of the ruling that the judge took a very black and white interpretation of the Martin Act. "If the tenant is in the building, even though they really have no legal right to be there anymore, the judge basically said they can then stay. But that's New York City residential law. For landlords sometimes

it feels like you're in Communist Russia."

The case is among several tenant-landlord battles being waged in the city where building conversion has boomed in the last several years of a housing mega-market. Developers and investors have been paying close attention to the results of these legal battles which potentially could have a far-reaching impact on residential development in the city.

Court success could improve the bargaining position of residents in negotiation with a building owner who has conversion plans and seriously impact the economics of condo development.

All of the legal experts agree that owners should try to work with tenants to alleviate any disputes.

"Commercial success in a tenant-friendly environment means dealing with

the tenants up front to avoid heartaches and litigation in the end," Gilbert said.

Owners should also make sure they are complying with all legal procedures.

"It's foolish not to take in into account all of the aspects," added Berger. "Not every buyer is up for a challenge."

Gilbert said a major reason why Met Life and Tishman have, so far, been successful in their case is because they were prepared and researched their investment.

"The developer has two issues: one is the people with which they have to deal with and then there's the legal quagmire. It clearly will not be a problem for Peter Cooper, but there are others," he said. "There are regulatory schemes that people in this business have to deal with. [Tishman] pretty much knows what they're doing and concluded that they

would not lose into luxury decontrol."

But even though an owner can be prepared for any legal hurdle, there is no way to predict how tenants will react. Heiberger, the Manhattan landlord-tenant specialist, said that owners face a real problem when tenants refuse to leave.

"The best case is that the tenants vacate building," she said. "Once you have one, you might as well have 10. Units don't get renovated if they're occupied."

But many developers are continuing with conversions, despite have tenants still in the building, opening the doors to more litigation, according to Berger referring to the case just last week that saw 80 families evacuated from a Harlem building during renovations and construction that allegedly exposed them to such contaminants as asbestos.