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'Regina' and Its Potential Impact on Settled Clams

Less than a year after the HSTPA was enacted into law, the real estate world was shaken again by an "earthquake of a decision," Regina Metro. Co. v. New York State Div. of Hous. & Community Renewal, which, among other things, found that the retroactive application of Part F of HSTPA was unconstitutional on due process grounds.

By **Nativ Winiarsky** | June 22, 2020 at 10:30 AM

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In one of the most recent ground breaking pieces of legislation that has impacted the real estate community, on June 14, 2019, the Housing Stability and Tenant Protection Act (HSTPA) was passed into law which significantly altered, to tenants' benefit, many aspects of long standing decisional and statutory law.

Prior to the HSTPA, rental overcharge claims were generally limited to a 4-year look back period for purposes of determining the existence of an overcharge claim. In the event a landlord overcharged a tenant, the burden was on the landlord to provide that said

overcharges were not willful and in the event the landlord failed to meet this burden, treble damages were imposed for a 2-year period before the filing of the overcharge claim.

With the passing of the HSTPA, and specifically the changes introduced in Part F of the legislation, there was now a 6-year statute of limitations on calculation of overcharge claims with no imitation on the look back period to determine the legal rent. Rather, the courts were now required to consider all available rent history which was reasonably necessary to investigate overcharge claims and determine legal regulate rents, regardless of their vintage of that history. Moreover, treble damages would now be imposed for a 6-year period and courts would now be obligated to award tenants attorney fees in the event an overcharge was found where prior to the enactment of the HSTPA, the award of such fees was discretionary.

Inasmuch as the HSTPA applied to all pending claims, courts began immediately applying the HSTPA retroactively to all cases irrespective of whether or not a decision was already rendered. All that mattered for the application of the HSTPA was that the case was still pending in some manner, which generally was found to be the case as long as there existed some possible appellate avenue. *See*, *Dugan v. London Terrace Gardens*, L.P., 177 A.D.3d 1, 110 N.Y.S.3d 3 (1st Dept. 2019)

Taking into account the widespread retroactive application of the HSTPA, landlords and tenants immediately had to factor into its weighty consequences in any cases pending before a court and same had to be considered by both parties when bearing in mind whether to continue to litigate a claim or pursue a settlement. In view of that portion of the HSTPA which also made the award of attorney fees in favor of the tenant mandatory in the event an overcharge was found, landlords found most often that it would behoove them to settle their claims.

Groundbreaking Decision

But less than a year after the HSTPA was enacted into law, the real estate world was shaken again by an earthquake of a decision. On April 2, 2020, the Court of Appeals issued an unusually lengthy groundbreaking 4-3 decision in regard to four interrelated cases under the heading of *Regina Metro. Co., LLC v. New York State Div.*

of Hous. & Community Renewal, 2020 N.Y. LEXIS 779, 2020 NY Slip Op 02127 (April 2, 2020) (*Regina*)[1] which, among other things, found that the retroactive application of Part F of HSTPA was unconstitutional on due process grounds. To give some sense of the import and extraordinary nature of the findings of the court in *Regina*, the 52-page dissent opens with the following pronunciation, "[f]or the first time in its history, our court has struck down, as violative of substantive due process, a remedial statute duly enacted by the Legislature." *Regina*, *supra*, at 66

Case Law

Among the many questions generated by *Regina* was what to do in pending cases where landlords had entered into stipulations relying upon an application of the law that has since proven to be deemed unconstitutional and would courts enforce such stipulations predicated upon a statute that was found to violate the due process rights of landlords. In tackling this question, one needs to review the case law governing the vacatur of stipulations in general and those cases in which the stipulation was predicated upon an unconstitutional law in particular.

It is noted that the cases which consider stipulations that are subsequently challenged all note both the importance and binding nature of stipulations *provided* they are advisedly entered into. (*See Hallock v. State of New York*, 64 N.Y.2d 224, 474 N.E.2d 1178, 485 N.Y.S.2d 510 [1984]; *Matter of Frutiger*, 29 N.Y.2d 143, 272 N.E.2d 543, 324 N.Y.S.2d 36 [1971] [Frutiger]). However,

stipulations may be attacked on the same grounds which would justify the rescission of a contract, including mistake, and that the mistake need not be mutual.

Thus, in *Frutiger*, *supra*, at 149, the Court of Appeals held "[i]t is sufficient if it appears that either party has inadvertently, unadvisably or improvidently entered into an agreement which will take the case out of the due and ordinary course of proceeding in the action, and in so doing may work to his prejudice."

The inherent reasoning was predicated upon whether both the plaintiff and defendant could be restored to substantially their former position. If so, numerous courts following the precedent of Frutiger, held that if a stipulation was entered into inadvisedly or that it would be inequitable to hold the parties to it, a stipulation should not be held and the action can then be tried in the ordinary way and a decision rendered on the merits.

Applying these long standing principles to landlord-tenant cases that "good cause" to vacate a stipulation may be found even in the absence of proof of "fraud, collusion, mistake, accident, or some other ground of the same nature." (*Frutiger*, *supra*, at 150) and that the "courts possess the discretionary authority to relieve parties from the consequences of a stipulation if it appears that the stipulation was entered into inadvisedly or that it would be inequitable to hold the parties to it" (*id.*), courts have not hesitated to vacate stipulations where "tenant's counsel lack[ed] of knowledge of the fact that tenant stood to lose a Section 9 subsidy" (*Park Propos Assoc. L.P. v. Williams*, 38 Misc.3d 35, 959 N.Y.S.2d 798 [App. Tm., 2nd Dept. 2012]) or where the stipulation "contain[ed] incorrect information regarding the amount of rent owed" (*Freeport Hous. Auth. v. Fleming*, 66 Misc.3d 369, 13 N.Y.S.3d 869 [Dist. Ct., Nassau Cty. 2019]) or where the stipulation had an incorrect rent amount (*Samson Mgt., LLC v. Cordero*, 62 Misc.3d 129[A], 112 N.Y.S.3d 422 [App. Term., 2nd Dept. 2018]); or where the tenant had a meritorious defense to a proceeding that was not raised (*1901 Hennessy LLC v. Vicente*, 2020 N.Y. Misc. LEXIS 770, 66 Misc. 3d 148(A) (App. Tm., 1st Dept. 2020).

Employing the same logic, and similarly utilizing these standards to cases where stipulations were entered into predicated upon an understanding of law that was later found to be unconstitutional or based upon a change of law, courts have continually utilized their discretionary powers to vacate such stipulations. Thus, in *Daniman v.*

Board of Education, 23 Misc.2d 664, 190 N.Y.S.2d 225 (Sup. Ct., Kings Cty. 1959), a group of teachers were terminated under the provisions of New York City, N.Y., Charter §903 because they refused to answer questions about their affiliation with the Communist party posed by the Committee on Judiciary of the United States Senate. These individuals entered into a stipulation by which they agreed to be bound by the outcome of the pending litigation.

Meanwhile, one individual's case had been severed when he chose to retain different counsel. In this individual's case, the U.S. Supreme Court declared that the aforementioned §903 was unconstitutional. During the stipulants' appeal to the Commissioner of Education, the movant's appeal was severed to permit a substitution of counsel. The movant argued that an inequitable and unjust result has occurred, and that his employment has been terminated under the provisions of a statute which has been determined to be unconstitutional. In finding for the movant and agreeing to vacate the stipulation, the court held that "[t]he language in some of the cases cited appears broad enough to sustain movant's position. While the facts are in some instances distinguishable, the broad propositions of law seem to justify a conclusion that movant is entitled to relief from our courts." *Id*. The court went on to hold in language that will likely resonate with any court faced with these set of circumstances:

> It is difficult for the court to accept and indorse any decision which permits a person to be deprived of property or other rights under a section of law which has been declared by the highest court of this land to be unconstitutional.

Similarly in *People ex rel. Tappin v. Cropsey*, 176 App. Div. 415, 162 N.Y.S. 927 (2nd Dept. 1917), a police officer sought review of an order for the trial court which was entered in favor of the police commissioner of the City of New York that denied the officer's motion to vacate a prior order that was based upon a reinstatement that was subsequently found to be illegal. In reversing the lower court's order which denied the motion, the Appellate Division held that "When it appears that a stipulation was entered into inadvisedly and enforcement would be inequitable, the court will relieve one party when both parties can be restored to substantially their former position." *Supra* at 417

Also in *Keeler v. Templeton*, 165 Misc. 392, 300 N.Y.S. 868 (Sup. Ct., Chemung Cty. 1937), the parties agreed that California law governed their dispute and that based upon their present understanding of same, a valid extension of the date of payment of a promissory note without the consent of the guarantees would have had the effect of releasing the guarantors from liability. The Supreme Court in California thereafter reversed its position as to such liability and based upon same, the court ruled that "the plaintiff should be relieved from the stipulation above quoted, and his motion to that extent is granted." *Supra* at 393.

More recently in *R&R Disposal Carting v. Town of Clarkston*, 163 Misc.2d 196, 620 N.Y.S.2d 215 (Sup. Ct., Rockland Cty. 1994), a disposal company and town entered into an agreement to settle the disposal company's liability for civil penalties that resulted from the disposal company's violation of a local law. The local law was subsequently found unconstitutional and invalid by the U.S. Supreme Court. The disposal company thereafter commenced an action seeking injunctive relief restraining the town from enforcing the terms of the stipulation on that ground that the local law was declared unconstitutional.

Relying on the U.S. Supreme Court case of *Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 113 S. Ct. 2510, 125 L. Ed. 2d 74 (1993), which held, *inter alia*, that "the Due Process Clause of the Fourteenth Amendment obligates the state to provide meaningful backward-looking relief to rectify any unconstitutional deprivation" (*supra* at 101) the court found that plaintiffs had met their burden and were entitled to the injunctive relief sought.

Conclusion

All of these long line of cases would seem to rather strongly support the argument that cases which were settled predicated upon the unconstitutional retroactive application of the HSTPA would be highly inequitable, especially where both parties can be restored to substantially their former positions and neither party would lose any advantage. To otherwise endorse the enforcement of such stipulations, would lend the courts' imprimatur to deprivation of valuable property rights and other rights under a section of law which has recently been declared by the highest court of this state to fail to comport with fundamental notions of substantial justice embodied in the Due Process Clause.

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ENDNOTES:

[1] This author argued *Raden v. W7879, LLC*, before the Court of Appeals which was one of the other three cases argued with *Regina* and decided in conjunction with *Regina* in one consolidated decision.