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Be Careful What You Stip For: 'Liggett v. Lewitt Realty LLC'

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What You Need to Know

- The NY Court of Appeals has held that a stipulation of settlement entered into by a landlord and future tenant more than two decades ago, to settle a holdover proceeding, was void as against public policy.
- The decision provides a clear warning and guidance that any stipulation of settlement, to be enforceable, must never contain an express waiver of any rights held by tenants under the rent laws.
- The decision invites challenges to any stipulations, no matter how old, that contain express waivers of rights.

In June 2024, the Court of Appeals decided *Liggett v. Lewitt Realty LLC*, — NY3d –, 2024 NY Slip Op 03378 (2024), reversing the Appellate Division, First Judicial Department, and holding that a so-ordered stipulation of settlement entered into by a landlord and future tenant more than two decades ago, to settle a holdover proceeding in March 2000, was void as against public policy, and therefore could not provide a basis in the 2021 action for the landlord to establish that the subject apartment was properly deregulated from rent stabilization decades earlier. The ruling from New York's highest state court, although straightforward on its face, has important implications for both long-existing settlement agreements and when considering drafting future agreements settling disputes in the context of the Rent Stabilization Law.

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The case concerned an apartment that was initially subject to rent control, with Edward Brown listed as the rent-controlled tenant in 1984. When Brown died in 1998, with a monthly rent of just $141.23, the landlord commenced a summary holdover proceeding against the surviving occupant, Edward McKinney, who claimed a right to succeed to Brown's rent-controlled tenancy. Generally, when a rent-controlled tenant dies or the apartment becomes vacant, either a permitted family member succeeds to the rent-controlled tenancy, or the apartment is decontrolled and becomes subject to rent stabilization. In the latter case, the initial rent-stabilized legal regulated rent for the apartment is required to be the first market rent agreed to by the landlord and the tenant in a lease agreement, subject to the tenant's right to file a Fair Market Rent Appeal (FMRA) with the Division of Homes and Community

Renewal (DHCR) challenging the rent as the actual fair market rent. The right to file a FMRA ensures that the first rent is a fair market rent.

Here, Lew Realty LLC disputed McKinney's right to succeed to Brown's rent-controlled tenancy. To settle the dispute, however, Lew Realty and McKinney agreed that McKinney would take the apartment as the first rent-stabilized tenant, and entered into a March 2000 stipulation settling the holdover proceeding, which was so-ordered by the Civil Court. The stipulation provided that $1,650 per month was the fair market rent for the apartment being removed from rent control, but that McKinney would accept a rent-stabilized lease at the preferential rent rate of $650 per month, which McKinney would pay for the duration of his tenancy, with allowable increases. Critically, the stipulation provided that McKinney agreed "not to challenge the rent," thereby expressly waiving his rights held as the first rent-stabilized tenant to challenge the legal rent in a FMRA, which McKinney had no incentive to challenge in the first instance given his indefinite preferential rent. Lew Realty filed the lease and so-ordered stipulation with DHCR, with proof that it had mailed McKinney a notice of his right to file a FMRA, despite McKinney waiving such right in the stipulation.

McKinney vacated the apartment in 2001, and Lew Realty applied permissible vacancy and renovation rental increases authorized by the Rent Stabilization Law. The legal regulated rent then exceeded the $2,000 threshold to luxury deregulate the apartment, removing it from rent-stabilization. Lew Realty then rented the apartment as a market apartment, ever since 2001.

Twenty years later, plaintiff Liggett was the market tenant of the apartment. When the landlord tried to increase her market rent, Liggett commenced an action in 2021 alleging that the March 2000 stipulation was void as against public policy both because: 1) it set the initial legal regulated rent at $1,650, an amount higher than the $650 rent that McKinney agreed to pay in the first lease; and 2) it expressly waived McKinney's right to file a FMRA. Liggett sought a declaration that the apartment was still subject to rent stabilization and rent overcharge damages.

The lower court denied dismissal of the action. However, on appeal, the Appellate Division, First Judicial Department, reversed and dismissed the action in its entirety, holding, among other things, that the law's protection that any agreement "by the tenant to waive the benefit of any provision of the RSL … is void" did not apply to McKinney, because he was not an established rent-stabilized tenant at the time he entered into the challenged stipulation.

The Court of Appeals reversed, holding, among other things, that the challenged stipulation was void because it expressly required McKinney to waive his right to file a FMRA, relying on the well-settled principle and Rent Stabilization Code regulation providing that any agreement "by the tenant" that waives any benefit of the Rent Stabilization Laws is void as against public policy, even if it benefits the tenant. The Court of Appeals further confirmed that this rule applies even if the individual entering into the agreement is not yet a tenant at the time of executing the agreement, settling the law in this regard, and holding: "McKinney's status vis-à-vis the apartment has no bearing on whether the Stipulation was void. Rather, the Stipulation is void because it purports to waive a benefit of the rent laws."

Notably, however, although Liggett challenged both the illegality of Lew Realty setting the initial legal rent higher than the preferential rent and the express waiver of McKinney's right to file a FMRA in the stipulation, the Court of Appeals cited solely to the express waiver of rights to file a FMRA in the stipulation in holding that it was void. This express waiver of rights alone rendered the stipulation to be void "in its entirety." Thus, the Court of Appeals did hold that the $1,650 legal rent was invalid, nor resolved the regulatory status of the apartment, but instead held that "[o]n remand, Lew Realty may rely on other reasons, apart from the Stipulation, to establish that the apartment

was not rent stabilized when Liggett took tenancy, such as by establishing the fair rent of the apartment when it first entered rent stabilization in 2000 and applying subsequent allowable increases pursuant to the rent history." Thus, the Court of Appeals left open the opportunity for Lew Realty to establish that $1,650 was the fair market rent in 2000.

The Court of Appeals also noted that, although Lew Realty registered the initial $1,650 legal regulated rent with DHCR decades earlier, and same had never been timely challenged, "there was no litigated proceeding before DHCR, and Lew Realty does not invoke collateral estoppel here," citing to *Gersten v 56 7th Ave. LLC*, 88 AD3d 189, 201 [1st Dept 2011]). This note suggests that, had there been a prior administrative proceeding by a former tenant challenging the legal rent, where the validity of the Stipulation could have been raised, the Court of Appeals would have adhered to principles of administrative finality and the preclusive effect of prior administrative orders, notwithstanding the express waiver of rights in the Stipulation. This may provide a defense to practitioners litigating the legality or enforceability of challenged stipulations in the future.

Moreover, although the subject stipulation in this action was not challenged for more than 20 years, the Court of Appeals confirmed that, because a tenant is never barred by a limitations period from challenging the regulatory status of an apartment (i.e., whether an apartment is subject to rent control or rent stabilization, or was properly deregulated), as opposed to challenging his or her legal rent amount or a bringing a rent overcharge claim to recover monetary damages (which may be subject to a statute of limitations depending on the time of the challenged conduct), the tenant was not barred from challenging the decades-old stipulation in order to seek a declaration as to the rent-stabilized status of the apartment, despite concerns about the substantial delay. However, the Court of Appeals expressly stated that it did not address any issue as to the timeliness of the market tenant's rent overcharge claim, which may still be barred by the statute of limitations, citing to precedent explaining the distinction between the limitations period applying to rent overcharge claims, but not governing claims as to regulatory status, which are never barred.

The decision provides a clear warning and guidance that any stipulation of settlement, to be enforceable, must never contain an express waiver of any rights held by tenants under the rent laws. However, the decision leaves open the question about whether the Court of Appeals would have still invalidated the two-decade-old so-ordered stipulation of settlement based solely upon the alleged illegality of the legal regulated rent agreed to therein (which rent was not challenged for 20 years), had the stipulation not contained an express waiver of the tenant's rights to file a FMRA (which was seemingly unnecessary to accomplish the settlement in the first place). This nuance may provide guidance when practitioners are determining how to artfully draft future settlement agreements to accomplish the parties' goals without running afoul of the brightline rule forbidding any express waiver of a tenant's rights under the rent laws. However, in any event, the decision nevertheless invites challenges to any stipulations, no matter how old, that contain express waivers of rights, particularly where the stipulation affects the regulatory status of an apartment.

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