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Harlem Landlord Should Face J-51 Class Claims, Tenants Say

By **Eric Hornbeck**

Law360, New York (April 26, 2012, 8:44 PM ET) -- Tenants of a Manhattan residential complex told a New York state court Thursday that the state's rent stabilization law doesn't block their class allegations against their landlord over the lucrative J-51 tax breaks that came to prominence in the landmark Stuyvesant Town decision.

The tenants allege that the landlord of their six 16-story buildings in New York's Harlem neighborhood cashed in on J-51 tax breaks — for developers who provide lower rents to the tenants — even as the landlord tried to jack up rents to market levels.

Even though the state rent laws that the suit was brought under preclude class actions when the plaintiffs seek treble damages, they could still pursue the suit as a class as long as they don't seek those damages, according to the tenants' attorney Matthew D. Brinckerhoff of Emery Celli Brinckerhoff & Abady LLP.

"As long as you don't seek the penalty," you can proceed as a class, Brinckerhoff told a five-judge panel of the Appellate Division of the New York Supreme Court.

But David C. Rose of Pryor Cashman LLP, who represents the landlord, said that the treble damages provision in the rent stabilization laws is mandatory and not waivable, and thus precludes the class action.

"The plaintiffs cannot waive it," he said.

Like the state's Donnelly Act, which reserves classwide antitrust cases for the attorney general, the rent laws also preclude class actions against landlords where the plaintiffs seek treble damages for the landlord's alleged overcharges, Rose argued.

Furthermore, the plaintiffs' complaint says it seeks treble damages and none of the plaintiffs have asked to withdraw that demand, he said.

The case, which was dismissed by a lower court, arises out of the New York Court of Appeals' decision in *Roberts v. Tishman Speyer Properties LP*, which found that the landlord of the sprawling Stuyvesant Town and Peter Cooper Village developments in Manhattan had improperly charged tenants unregulated market rates even though the landlord had received J-51 tax breaks in return for making apartments subject to rent stabilization.

That decision left many questions unanswered, including the appropriate statute of limitations, how to calculate the appropriate rents and how to bring class allegations, according to the lower court decision.

Justices Leland G. DeGrasse, Richard T. Andrias, Peter Tom, Dianne T. Renwick and Sheila Abdus-Salaam sat on the panel.

The tenants are represented by Matthew D. Brinckerhoff of Emery Celli Brinckerhoff & Abady LLP.

The landlord is represented by David Rose of Pryor Cashman LLP.

The case is Elise Downing et al. v. First Lenox Terrace Associates et al., case number 100725/2010, in the Appellate Division of the Supreme Court of the State of New York, First Judicial Department.

--Editing by Andrew Park.

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