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COURT OF APPEALS

STATE OF NEW YORK

ELIZABETH REICH AND STANLEE BRIMBERG,

Appellants,

-against-

NO. 4

BELNORD PARTNERS, LLC AND EXTELL
BELNORD, LLC,

Respondents.

20 Eagle Street
Albany, New York
January 7, 2020

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE PAUL FEINMAN

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE DIFIORE: The next appeal on this
2 afternoon's calendar is appeal number 4, Reich v. Belnord
3 Partners.

4 Good afternoon, again, Counsel.

5 MR. VERNON: Your Honors, may it please the
6 court, again, my name is Darryl Vernon. I'm here with
7 Yoram Silagy. We're here for the appellants, the tenants.

8 CHIEF JUDGE DIFIORE: Now you may request your
9 rebuttal time, sir.

10 MR. VERNON: And now, may I have two minutes
11 rebuttal?

12 CHIEF JUDGE DIFIORE: You may.

13 MR. VERNON: And in the prior case, too.

14 JUDGE WILSON: And if I had paid closer attention
15 to appearances of counsel, I would have asked you the
16 McMaster question. So can I start there?

17 MR. VERNON: The McMaster - - -

18 JUDGE WILSON: You're also here - - - you're also
19 here on a certified question. And McMaster, I know was
20 raised in - - - in this appeal. And so I'm wondering how
21 you get by the language there that says - - - as I read it,
22 at least - - - if there's an intervening new piece of
23 legislation, but the cases come up on a certified question,
24 we can only answer whether the Appellate Division was
25 correct on the basis of the law as it was at the time that



1 the Appellate Division decided the case.

2 MR. VERNON: So I read McMaster - - - and I know
3 it's cited in this case - - - to say that they did not
4 consider the statute on appeal because it was found
5 unconstitutional. That was the reason they didn't find it
6 at con - - - on appeal. And the - - - in the other cases
7 that this court has decided, meaning Post, where they found
8 there was a right to cure, even after the case was going on
9 - - - a serious change; in the Boardwalk case, where it
10 plainly just applied on appeal - - - and in that case the
11 court put - - - this court put it very well. They said you
12 cannot affirm something in violation of the law.

13 So to the - - - the law clearly says it applies
14 to pending claims. We have a pending claim, no doubt.
15 It's up on - - -

16 JUDGE FAHEY: Does - - - does it matter in
17 McMaster that that was a case that was decided on
18 reargument?

19 MR. VERNON: No, I don't - - -

20 JUDGE FAHEY: Have you thought about that? How
21 about - - -

22 MR. VERNON: - - - think - - - I haven't thought
23 about - - -

24 JUDGE FAHEY: - - - its relat - - -

25 MR. VERNON: - - - that. But I don't think that



1 would matter. I think the key issue is, is it still
2 pending.

3 JUDGE FAHEY: Um-hum.

4 MR. VERNON: And certainly for - - - for purposes
5 of this statute - - -

6 JUDGE FAHEY: I see.

7 MR. VERNON: - - - which says a claim is pending.

8 JUDGE FAHEY: How about in the context of the
9 Robinson case? Are you familiar with that?

10 MR. VERNON: No. I didn't see that cited in the
11 briefs.

12 JUDGE FAHEY: All right, well, it - - - it was a
13 year before. It was a Court of Appeals Case. And it was a
14 case where a procedural statute was applied to pending
15 appeals.

16 MR. VERNON: Um-hum.

17 JUDGE FAHEY: And I think the two cases may have
18 to be read together, for our purposes, they're so close in
19 time, in terms of - - -

20 MR. VERNON: I see.

21 JUDGE FAHEY: - - - analysis.

22 But if you're not familiar with it, it's okay.

23 MR. VERNON: I - - - I apologize.

24 JUDGE FAHEY: No, it's not a problem.

25 MR. VERNON: But I would like to address - - - I



1 know Your Honor's concerned with repose. And I - - - and I
2 - - - and I'm listening and trying to address it and would
3 like to take the opportunity.

4 Landlords do have repose. And - - - and to some
5 extent, nobody has repose, because statutes change. So
6 tenants didn't have repose when, for example, there was a
7 point where they couldn't live together if they weren't
8 married. And - - - and the laws changed, finally.

9 And so there have been serious changes on both
10 sides. And - - - and there was a time when tenants
11 couldn't be evicted in luxury deregulation. There was a
12 time tenants couldn't get evicted in owner occupancy, under
13 certain grounds. And that expanded. So things do change.

14 But the repose that the landlord has is: a) he
15 only is going to owe the number of years that is up to six
16 years. The second is, they don't need records forever.
17 They just need to keep some reasonable records. It doesn't
18 have to be six years. It could be seven. As long as they
19 have something, they have repose.

20 The cases we're all talking about, number one,
21 hardly ever happen because I would lose out on so many
22 years of overcharges if I'm bringing a case ten, twenty
23 years later. My proof problems, as a tenant, would be
24 miserable.

25 So there is repose. And it's not much different



1 than other cases where you sue someone within the deadline,
2 you can only get a certain amount, but a lot of the proof
3 is from things you did years and years ago. I - - - you
4 know, I built the elevator twenty years ago, and something
5 was wrong with it.

6 So I don't - - - I don't think the repose
7 question is so problematic, and nor do I think it's
8 entirely dispositive of why this statute should apply. I
9 think the key is that the legislature said they want it to
10 apply. And they did indeed express all about the remedial
11 - - -

12 JUDGE GARCIA: But most of the time - - -

13 MR. VERNON: - - - intent - - - sorry.

14 JUDGE GARCIA: - - - you have a - - -

15 MR. VERNON: Sorry.

16 JUDGE GARCIA: The ones I know of, you have a
17 statute of limitations that says a certain number of years
18 from X, you have to bring a claim. What is the X here?

19 MR. VERNON: Okay, the X is from - - - you have
20 to - - - well, I'm sorry. There never has been an actual
21 deadline by which you have to bring an overcharge claim.
22 The deadline is you just don't get damages for more than X
23 years before you brought the claim.

24 JUDGE GARCIA: But - - -

25 MR. VERNON: And that now has been plainly



1 codified. But there never was one. We cited Christensen,
2 I think, and - - -

3 JUDGE GARCIA: Wasn't the last one from the last
4 overcharge - - -

5 MR. VERNON: That's how you calculate.

6 JUDGE GARCIA: Right, but if I wasn't
7 overcharging for four years under the prior statute, we're
8 done.

9 MR. VERNON: Absolutely.

10 JUDGE GARCIA: Not true now?

11 MR. VERNON: No, it is still true. If you
12 weren't overcharging for four years, you don't owe me
13 anything.

14 JUDGE FAHEY: Well, six now, under the new
15 statute.

16 MR. VERNON: Sorry, six.

17 JUDGE FAHEY: But, yes.

18 MR. VERNON: You still don't owe me anything.
19 The issue I know you're concerned with is now I can go back
20 a little further to try to find a reliable record. But
21 that's a perfectly fair way to deal with it, because if
22 this landlord has no reliable records for four, five, six,
23 ten years, that's a problem. That shouldn't inure to their
24 benefit.

25 None of the cases we have - - - the two cases I



1 have here - - - have that problem or any complaint - - -

2 JUDGE FAHEY: So - - -

3 MR. VERNON: - - - about records.

4 JUDGE RIVERA: I understand these arguments to be
5 that they might not have records - - -

6 MR. VERNON: Yes.

7 JUDGE RIVERA: - - - because, as far as they
8 knew, under the law, they didn't have to keep records.

9 MR. VERNON: But what I mean to say is that in
10 these cases that we have argued to you, none of the owners
11 are complaining that they didn't have the records.

12 JUDGE RIVERA: That they didn't.

13 MR. VERNON: Okay.

14 JUDGE RIVERA: But - - - but let's go with this
15 hypothetical - - -

16 MR. VERNON: Just generally, yes. I understand.

17 JUDGE RIVERA: - - - let's go with that
18 hypothetical.

19 MR. VERNON: Yes, so that - - - so if they're
20 complaining they didn't have records - - -

21 JUDGE RIVERA: Doesn't that mean, then, there's
22 no repose - - - I think that's part of - - -

23 MR. VERNON: Yes, I - - -

24 JUDGE RIVERA: - - - the question.

25 MR. VERNON: - - - I understand. But I - - - I



1 pointed out earlier that one reason they needed records
2 anyway is that other cases did allow you to go back to
3 prove your regulation, and two, they should be able to
4 prove their rent. If they didn't keep records for twenty -
5 - -

6 JUDGE STEIN: In some of these cases - - -

7 MR. VERNON: - - - years - - - sorry.

8 JUDGE STEIN: Counsel, in some of these cases,
9 the landlord - - - the - - - the owners - - - the buildings
10 changed hands along the way, right?

11 MR. VERNON: Um-hum. Um-hum.

12 JUDGE STEIN: And - - - and it seems to me that
13 if you know that you - - - you may potentially be liable
14 for overcharges and have to look back a long way to
15 determine what those overcharges were, that if you're
16 buying a building, you're going to require certain records
17 from the prior owner - - -

18 MR. VERNON: Um-hum. Um-hum.

19 JUDGE STEIN: - - - and if the prior owner
20 doesn't have those records, well, that may affect the price
21 of the building or - - - or your calculation of whether
22 you're going to buy it. So it's not just a matter of well,
23 why should we encourage or reward these landlords for not
24 keeping records. I think it's a little more complicated
25 than that, don't you?



1 MR. VERNON: Yeah, I do think it is more
2 complicated. But I think in your example, that when the
3 buyer didn't get records, he'd pay a lower price - - -

4 JUDGE STEIN: Well, that's - - - yeah - - -

5 MR. VERNON: - - - and he's get something for it,
6 and therefore the lack of repose, he's - - -

7 JUDGE STEIN: But he - - - but he doesn't - - -

8 MR. VERNON: - - - compensated for - - -

9 JUDGE STEIN: - - - know to ask for the - - -

10 MR. VERNON: - - - because me might - - - sorry.

11 JUDGE STEIN: - - - my point is he doesn't know
12 to ask for those records or - - - or negotiate the price
13 when the law changes on him retroactively.

14 MR. VERNON: Well, I don't - - - I don't agree
15 with that, because I think all landlords know these
16 regulations just change all the time. And they've changed
17 for twenty-five years toward the direction, for the most
18 part, of owners. And before that they were a little better
19 for tenants. And now they're changing back. And they're
20 changing back, in part, because they do think there was an
21 imbalance, and they said that in the legislation. They
22 said - - -

23 JUDGE RIVERA: So that is one measure of the
24 reasonable expectations in a heavily regulated industry,
25 because that's what you're arguing.



1 MR. VERNON: That is what I'm arguing; yes.

2 JUDGE RIVERA: Yes.

3 MR. VERNON: That - - - that when you bought the
4 building, your expectation was it's regulated. You might
5 look back to '93 when, you know, there wasn't vacancy
6 deregulation. That might happen again. And it did happen
7 again. So things just changed around.

8 CHIEF JUDGE DIFIORE: The expectation that your
9 liability may be changed retrospectively?

10 MR. VERNON: Yes, I do think that's a fair - - -
11 because it did change in the past. It changed for the
12 better in the past, and they didn't come complain then.
13 Tenants - - -

14 JUDGE FEINMAN: What about the addition of the
15 two years versus the four years?

16 MR. VERNON: I think it's nominal. And I think
17 it's - - - I think it's something that was meant to balance
18 this and perhaps maybe create incentive, as Your Honor
19 pointed out, to not overcharge as much; maybe because they
20 thought many overcharges were occurring and not - - - and
21 the money wasn't being recouped and/or tenants were moving
22 out in deregulated apartments. So landlords had windfalls
23 in that situation.

24 So I do think there are a lot of reasons that
25 they would come up with the six years. And it was their



1 prerogative - - -

2 CHIEF JUDGE DIFIORE: Thank you, Counsel.

3 MR. VERNON: - - - they could have shortened it -
4 - - they was a time they shortened it. Sorry.

5 CHIEF JUDGE DIFIORE: Thank you.

6 MR. VERNON: Thank you for hearing me.

7 CHIEF JUDGE DIFIORE: Counsel?

8 MS. RIEGEL: Good afternoon. Deborah Riegel
9 together with my colleague Ethan Cohen, from the law firm
10 of Rosenberg & Estis, for the respondents.

11 I'd like to start with the certified question. I
12 don't think there is any question - - - and I think there's
13 a reason that Mr. Vernon assiduously stayed away from the
14 certified question - - - there is no factual disputes that
15 these tenants did not bring their claim within the time
16 frame provided under 213-a. It is undisputed in the
17 record. It's what the Supreme Court held, it's what the
18 Appellate Division held.

19 And this is the landlord that did everything it
20 should have done, post-Roberts. This landlord registered
21 rents, provided rent-stabilized leases, and increased the
22 rents only in accordance with guidelines, before
23 retroactivity was determined.

24 Not only did the landlord do that, the landlord
25 put these tenants on notice that they had a potential claim



1 under Roberts. And unlike the tenants in all of the cases
2 you've heard before, today - - -

3 JUDGE RIVERA: Are you - - - are you attempting
4 to argue that the legislature could only pass a retroactive
5 statute to impact bad-behaving landlords, as opposed to
6 correct what it saw as an erroneous stream of rent?

7 MS. RIEGEL: So what I'm suggesting, Your Honor,
8 is twofold. Number one - - - and - - - and Judge Stein
9 alluded to it earlier - - - this is not a claim revival
10 statute, in my view. And there's no question,
11 notwithstanding Mr. Vernon's argument that there was no
12 statute of limitations, that 213-a was a statute of
13 limitations prior to the change in the law.

14 And Conason only held that there was an exception
15 because they found there was fraud in this case. And in -
16 - - in our case, both the Supreme Court and the Appellate
17 Division expressly held that there has been no fraud here.
18 This is a landlord that only deregulated the unit in
19 reliance on the pre-Roberts law and acted immediately to
20 correct its conduct when Roberts was decided.

21 There's nothing in this statute - - - no language
22 whatsoever - - - that makes it a claim-revival statute.
23 When you look at the language of the Child Victims Act,
24 which was enacted by the very same session of this
25 legislature, same members of the legislature, same



1 legislative bill drafters, the Child Victims Act is
2 drastically different. It specifically says that every
3 civil claim or cause of action is hereby revived. An
4 action thereon may be commenced within a specified time
5 frame.

6 It goes on to say that "dismissal of a previous
7 action ordered before the effective date of this section,
8 on grounds that such previous action was time-barred, shall
9 not be grounds for dismissal of a revival action, pursuant
10 to this section."

11 There is nothing close to that in this statute.
12 And Judge Feinman did an exhaustive review, in In re World
13 Trade Center, of the claim-revival statutes that have pre -
14 - - that have been held to be claim-revival statutes. They
15 all have one singular component. They tell you: we are
16 reviving this claim and we're reviving it for some period
17 of time, because of some extraordinary circumstance.

18 CHIEF JUDGE DIFIORE: So if it's not claim
19 revival, what is it?

20 MS. RIEGEL: It's a prospective statute. It does
21 not apply to claims that have already been lost by virtue
22 of the failure to act within the statute of limitations.
23 And - - -

24 JUDGE FAHEY: Of course, that's - - - that's not
25 what the legislature said.



1 MS. RIEGEL: Well, because the legislature didn't
2 say it. And because the case law - - -

3 JUDGE FAHEY: Well, they said - - - they said the
4 opposite, actually, didn't they?

5 MS. RIEGEL: Well, they said it applies to
6 pending - - -

7 JUDGE FAHEY: Taking them at their word, they
8 said it applies to pending claims. Let's assume it applies
9 to these claims, then?

10 MS. RIEGEL: Well, they said it applies to
11 pending claims. And I would suggest - - -

12 JUDGE FAHEY: So - - - so the argument is - - - I
13 think you tend to be - - - I kind of agree with you. I - -
14 - I don't think it's a claim-revival statute. It's a
15 question of whether these are pending claims, and then what
16 evidence applies, I think.

17 I think - - - I don't think it's a - - - I think
18 that you're logical - - - it's a logical argument you're
19 making. But that doesn't negate, though, the pending-
20 claims argument.

21 MS. RIEGEL: Well, when - - - when you speak
22 about pending claims - - -

23 JUDGE FAHEY: Assuming they're pending, then, of
24 course, the evidentiary arguments, yeah.

25 MS. RIEGEL: Well - - -



1 JUDGE FAHEY: Right.

2 MS. RIEGEL: - - - but when you talk about
3 pending claims, then the question is the distinction
4 between pending claims and pending actions and proceedings.

5 JUDGE FAHEY: Okay. It's fine if you want to
6 argue that. I'm sure the other judges want to listen to
7 you, but I've never been impressed by that argument.

8 MS. RIEGEL: Okay.

9 JUDGE FAHEY: But - - - but - - - but I'm only
10 one guy. So - - -

11 JUDGE STEIN: But just to clarify, you're - - -
12 you're saying that this wasn't explicitly made a claim-
13 revival statute, but it has that effect. Am I
14 understanding you correctly?

15 MS. RIEGEL: No. I - - -

16 JUDGE STEIN: Okay.

17 MS. RIEGEL: - - - I'm saying it is not a claim-
18 revival statute. And the argument that Counsel is making
19 is to give it the effect of being a claim-revival statute,
20 notwithstanding that the legislature didn't do it.

21 JUDGE WILSON: Well, the portion of it that says
22 you can look at records that are older than four years in
23 determining what a reasonable rate is, you wouldn't say
24 that's a claim-revival statute, right?

25 MS. RIEGEL: I would agree that with respect to a



1 timely asserted rent-overcharge claim, that's not a revival
2 statute. But - - -

3 JUDGE WILSON: That is, if somebody had filed
4 within four years, let's say, and the portion of the
5 statute that then says where you only - - - we were cabined
6 to four years, you can now look indefinitely back to try -
7 - - you're not claiming that that's - - -

8 MS. RIEGEL: I think there are other issues with
9 that that don't - - - don't obtain (sic) to this case and
10 this procedural - - -

11 JUDGE WILSON: But you're not saying that makes
12 it a climb - - - a claim-revival statute. That's not your
13 argument?

14 MS. RIEGEL: No, my - - - my argument is that
15 with respect to claims that have lapsed by virtue of a
16 statute of limitations that existed at the time the claim
17 was brought, it - - - they are not revived by virtue of - -
18 -

19 JUDGE FAHEY: Well, but let me ask this. Is
20 there any other area of the law - - - statute of
21 limitations limit commencement. We started out today
22 talking about that.

23 Is there any other area of the law that
24 incorporates within it a statute of limitations that limits
25 evidence that you can present from a certain period? As



1 Counsel on the other side says, well, okay, you - - -
2 you've got an accident case, and the car was - - - is ten
3 years old, and it was poorly designed, but the accident - -
4 - but you brought your action within three years of the
5 accident, you can go back and look at the design of the
6 car.

7 All of that proof comes in. There's no question
8 of that. If your elevator fails in this building when you
9 live there, you can go back fifty years and look and see
10 how the elevator was put together here, one way or the
11 other. What - - - why is this - - - this is such an
12 unusual limitation. It - - - why is that? And why should
13 the legislature not be able to modify that rule of
14 evidence?

15 MS. RIEGEL: So in the first instance, it's - - -
16 it is - - - respectfully, it's predicated on an assumption
17 that there was a timely claim.

18 JUDGE FAHEY: Um-hum. I - - - well - - -

19 MS. RIEGEL: And there - - - and there's not.
20 But - - -

21 JUDGE FAHEY: - - - the claim - - - the claim - -
22 - the claim's always going to be timely. It's like we've -
23 - - these are rolling claims. They're ongoing. So it was
24 - - - so - - - so let's just assume it's within the four or
25 six years. It doesn't matter to me which one you want to



1 talk about. I want to talk about the look-back period - -
2 - the evidence that's admissible.

3 MS. RIEGEL: We're not there, in this case, Your
4 Honor.

5 JUDGE FAHEY: Um-hum.

6 MS. RIEGEL: This was - - - this was dismissed on
7 a pre-answer motion to dismiss.

8 JUDGE FAHEY: Yeah, that's - - - I - - - okay - -
9 -

10 MS. RIEGEL: There's - - -

11 JUDGE FAHEY: - - - I thought - - - it wasn't
12 summary judgment?

13 MS. RIEGEL: No, this was pre-answer - - -

14 JUDGE FAHEY: There was no summary judgment.

15 MS. RIEGEL: - - - motion to dismiss.

16 JUDGE FAHEY: - - - it was all pre-answer. Okay.

17 MS. RIEGEL: There is no evidence in the record.

18 Although I would point out to Your Honor that the
19 plaintiffs not only - - - the appellants not only pleaded
20 but moved for summary judgment on their allegation that
21 this unit was previously owner-occupied, in which case, the
22 rent they were charged was a first rent, which under the
23 law, was not susceptible to challenge in the manner they're
24 challenging it.

25 This - - - a first rent is not a rent that is an



1 increase over a prior rent, precisely because this unit was
2 temporarily exempt, and appellants not only pleaded it, but
3 moved for summary judgment on that basis.

4 So they have conceded that this was a first rent.
5 And - - - and I would point out that unlike the other - - -

6 JUDGE FAHEY: So - - - so - - -

7 MS. RIEGEL: - - - cases, we have - - -

8 JUDGE FAHEY: - - - so their motion was a motion
9 for summary judgment?

10 MS. RIEGEL: Well, they moved for summary
11 judgment before issue was joined.

12 JUDGE FAHEY: All right. All right.

13 MS. RIEGEL: But I would also point out - - -

14 JUDGE FAHEY: I just wanted to make sure I didn't
15 read it wrong. All right, go ahead.

16 MS. RIEGEL: No, no, no. They did. They cross-
17 moved against my pre-answer motion to dismiss with a motion
18 for summary judgment, notwithstanding that we hadn't
19 answered. So - - -

20 JUDGE FAHEY: I see.

21 MS. RIEGEL: - - - it's a little procedurally - -
22 -

23 JUDGE FAHEY: Unusual.

24 MS. RIEGEL: - - - strange. Strange.

25 I would also point out that we have six years of



1 registrations here. The minute Roberts was decided, my
2 client started registering these - - - this unit. In 2010,
3 2011, 2012, 2013, 2014, 2015, 2016; after all of those
4 years of registrations, the tenants woke up.

5 There - - - and they have no explanation or no -
6 - - no reasonable explanation for why they didn't act at
7 any point like all of the other tenants who you've heard
8 from today did.

9 I - - - I find it astonishing that they sat on
10 their rights and they - - -

11 JUDGE RIVERA: I'm a little confused. How does
12 that affect the case?

13 MS. RIEGEL: Well, it affects the case because
14 the rationale that is advanced for going back - - -

15 JUDGE RIVERA: Um-hum.

16 MS. RIEGEL: - - - farther, or for allowing this
17 claim that Counsel makes, is that this was a bad actor.
18 This landlord was a bad actor. This landlord was no more a
19 bad actor than any other landlord that got caught in the
20 Roberts trap.

21 JUDGE RIVERA: Do you understand the HSTPA to
22 apply only to landlords who are quote/unquote "bad actors"?

23 MS. RIEGEL: No.

24 JUDGE RIVERA: I'm not quite sure what you mean
25 by that.



1 MS. RIEGEL: No, no, no. No. I - - - it - - -
2 it - - - I - - - the HSTPA applies to landlords who - - -
3 whether intentionally or mistakenly - - -

4 JUDGE RIVERA: Right.

5 MS. RIEGEL: - - - overcharge their tenants.

6 JUDGE RIVERA: Correct.

7 MS. RIEGEL: There's no dispute about that.

8 JUDGE RIVERA: Correct.

9 MS. RIEGEL: But their suggest - - - their
10 suggestion is you should allow them to bypass the statute
11 of limitations because they think there was something
12 nefarious going on here. That's their excuse for why the
13 statute of limitations - - -

14 JUDGE FAHEY: Well, I - - - well - - -

15 MS. RIEGEL: - - - shouldn't apply.

16 JUDGE RIVERA: Um-hum.

17 JUDGE FAHEY: I understood the argument to be
18 that - - - that they want the 2019 changes to apply, not
19 that they should ignore the statute of limitations.

20 MS. RIEGEL: Well, but in applying the 2019
21 changes in the law, in effect, they're asking you to ignore
22 a statute of limitations that bound them at the - - - at a
23 time when they could have timely brought their claim.
24 There's no explanation.

25 And I just want to point out one last piece,



1 which is, with respect to retrospective application - - -

2 JUDGE FAHEY: Um-hum.

3 MS. RIEGEL: - - - this court has held that
4 retrospective application with respect to procedural steps
5 in case is not proper. Where there is a procedural act
6 that has already occurred, as here, a dismissal of the
7 action, retrospective application will not permit this
8 court or any court to look back and review that
9 determination.

10 So with respect to retrospective application on
11 procedural steps - - - and there's no dispute in the law
12 that statute of limitations is a procedural step - - - that
13 that application has to be prospective only.

14 CHIEF JUDGE DIFIORE: Thank you, Counsel.

15 MS. RIEGEL: Thank you.

16 CHIEF JUDGE DIFIORE: Counsel?

17 MR. VERNON: Please. A few quick things.

18 I - - - I don't make the claim that it's a claim
19 revival. I make a claim that the statute says what it says
20 and that there are claims pending in front of this court,
21 because there's a certified question whether we should win
22 or lose, and that's our claim, so it's pending.

23 Second, the renewal - - - the leases that we were
24 given, number one, as Your Honor said, it doesn't really
25 matter under the HSTPA what we were given. They have to be



1 examined if they're reliable records. That's best done on
2 remand. But we were not given stabilized leases. We were
3 given a renewal lease, based on an unlawfully deregulated
4 lease.

5 And that renewal lease said in it, anew, with
6 each renewal, that we're all reserving our rights. The
7 landlord said - - -

8 JUDGE FEINMAN: When you say an "unlawfully
9 deregulated lease", why?

10 MR. VERNON: Because it was the lease in 2005
11 that was deregulated and had a deregulated rent. They only
12 then gave us a renewal in 2010, based on that. You can't
13 do that, under stabilization. You have to give an initial
14 stabilized lease. You have to give riders that say how you
15 calculated the rent. They did nothing of the sort.

16 They gave a rider that said we did a good-faith
17 determ - - - calculation. They've never said what it was,
18 because - - -

19 JUDGE FEINMAN: So you're disputing her
20 contention that because it was owner-occupied it was
21 exempt, and this is a first rent?

22 MR. VERNON: Oh, yeah. We - - - we're disputing
23 that. What we said in the - - - there was - - - no such
24 thing was said. We said on information and belief, the
25 prior owner - - - the prior tenant was maybe an owner. But



1 then we put the records in, which are in the record before
2 the court, and they show it was, for the most part not
3 registered for some twenty years, and at times registered
4 as exempt with no explanation.

5 So we say that on remand, it's just up to them.
6 They want to prove some wonderful reliable record, they can
7 do that. But those renewals each said we're not even sure
8 you're stabilized; we're - - - we'll adjust the rent if
9 we're required to do so.

10 So they were saying to us that they were not
11 taking repose, as Your Honor puts it, in these renewals.
12 They were not saying anything like that. They were saying
13 we're all waiting to see, but Gersten has to be decided on
14 retroactivity, and then we're going to see.

15 Then Gersten was decided, and they still gave us
16 very similar renewals saying we're still not sure. We're
17 not sure you're stabilized.

18 When we finally sued them was when, in 2016, they
19 gave us a renewal saying now you're stabilized; here's your
20 rent; but we're going to deregulate you in three months,
21 because the J-51 is going to expire. Sorry we didn't
22 attach all the riders and tell you about that - - - which
23 was required. That's when the case was brought.

24 And - - - and that's why it took time. And on a
25 3211 motion, none of this could come out. We certainly



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submit that 3211 was an entirely inappropriate way to deal with this case when we made sufficient allegations, and for sure under the HSTPA, we have a valid claim.

CHIEF JUDGE DIFIORE: Thank you, Counsel.

MR. VERNON: Thank you for hearing me.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript of proceedings in the Court of Appeals of Elizabeth Reich and Stanlee Brimberg v. Belnord Partners, LLC and Extell Belnord, LLC, No. 4 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Penina Wolicki

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