

# State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or [gspencer@nycourts.gov](mailto:gspencer@nycourts.gov).

To be argued Wednesday, September 4, 2019

## **No. 67 Maddicks v Big City Properties, LLC**

Theresa Maddicks and 27 other current and former tenants of 11 New York City apartment buildings brought this putative class action against their landlords, alleging that they engaged in a common scheme to charge inflated rents in violation of the Rent Stabilization Law. They claimed the building owners and their predecessors illegally overcharged tenants by failing to offer rent-stabilized leases in buildings that were receiving J-51 tax incentives; inflating the cost of improvements made to individual apartments; failing to register accurate rental information needed to calculate legal regulated rents; and improperly deregulating apartments and inflating the initial fair market rents charged for them. The plaintiffs contend the individual owners of the buildings are all held by Big City Acquisitions LLC and all of the buildings managed by Big City Realty Management LLC.

Supreme Court granted a pre-answer motion by Big City to dismiss the complaint, saying the plaintiffs “failed to properly asserts a class action ... because the questions of law or fact common to the class do not predominate over questions affecting only individual members.” The court said “each claim requires fact-specific analysis which precludes class certification. There are different buildings involved, different owners, different dates when the owners acquired the property, different prior owners, different registration periods and since there are different theories of recovery, each theory requires different defenses and evidence.”

The Appellate Division, First Department modified in a 3-2 decision and reinstated most of the claims and class action allegations. The majority said the dismissal, “before an answer was filed and before any discovery occurred, was premature.... If discovery were to show that, for example, Big City charged all the tenants the same fraudulent and inflated amounts for claimed improvements, this would support a class action and make one tenant’s proof relevant to that of other tenants.... [W]hether individual issues will predominate over class concerns can be fleshed out once plaintiffs make a motion for class certification and defendants oppose it.... At this stage when defendants have not answered, we do not know what documents they have, if any, to justify the increases.... If their defenses are the same for many of the units, then the scheme alleged by plaintiffs may have relevance, and the potential members of the class should not, as a matter of law, be precluded from raising these claims as a group.”

The dissenters said, “Although the complaint alleges that the overcharges fall into four broadly similar categories, and that the overcharges were systematically planned, the complaint does not identify any question of law or fact common to the entire proposed class (or to the proposed subclass of current tenants). Stated otherwise, in the end, regardless of any plan by defendants or any overcharges of other tenants, each class member either was or was not overcharged – a question that can be determined only by looking at the evidence concerning that tenant’s individual unit.... To be clear, the point I am making is not that the common questions will not predominate; it is that questions common to the class, predominant or otherwise, simply do not exist.”

For appellants Big City et al: Simcha D. Schonfeld, Manhattan (212) 796-8914  
For respondents Maddicks et al: Roger Sachar, Manhattan (212) 619-5400

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**No. 68 People v Michael Cubero** (*papers sealed*)

Michael Cubero was a residential counselor for Orange/Sullivan Rehabilitation Support Services, a group home for adults with serious mental illnesses, when he was charged by a special prosecutor for the Justice Center for the Protection of People with Special Needs in a 2014 indictment with sexually abusing a female resident in his care. The Justice Center was created in 2012 to investigate and prosecute crimes involving abuse or neglect of individuals with physical or cognitive disabilities. Cubero was convicted in Sullivan County Court of three felony counts and two misdemeanor counts of sexual abuse and endangerment and was sentenced to eight years in prison.

Cubero did not challenge the constitutional authority of the Justice Center to prosecute him at the trial stage, but on appeal he argued that the State Constitution does not permit an appointed special prosecutor to pursue criminal cases independently of an elected district attorney or state attorney general. In the alternative, he argued the Justice Center's authorizing statute could be viewed as constitutional only if the special prosecutor proceeds with the consent and oversight of the local district attorney, which he said the prosecutor in his case did not do.

The Appellate Division, Third Department affirmed in a 4-1 decision, declining to reach Cubero's unpreserved constitutional claims in the interest of justice. "Even if we could theoretically address the purely legal aspect of defendant's argument, we cannot address the alternative argument ... because that aspect of the argument requires factual findings," and there is no trial record regarding whether the district attorney gave consent, the majority said. "This Court is permitted only to reverse or modify in the interest of justice (*see* CPL 470.15[3][c]). But a full review of the issue would be impossible without remittal, so, at this point, we do not know if we would ultimately reverse, modify or affirm. Because we do not know what the outcome would be, and since it is possible that the outcome could be to affirm, we find no authority that would permit us to take corrective action with respect to this issue in the interest of justice."

The dissenter said, "In my view, we have the inherent authority to remit this matter for further proceedings to develop the factual record on the consent issue.... Fundamentally, '[a]n appeal from a judgment brings up the question whether justice has been done in the particular case'.... Whether the Special Prosecutor was actually authorized to prosecute this matter presents just such a concern that enables us to remit for further development of the record. Depending on the outcome of such proceedings, we may then address whether to exercise our interest of justice jurisdiction under CPL 470.15(3) (c) and (6). Consequently, I would withhold decision and remit the matter to determine whether the District Attorney consented to defendant's prosecution."

For appellant Cubero: George J. Hoffman, Jr., East Greenbush (518) 859-7137

For respondent Justice Center: Assistant Special Prosecutor Caitlin J. Halligan (212) 351-4000

For intervenor Attorney General: Solicitor General Barbara D. Underwood (212) 416-8022