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COURT OF APPEALS

STATE OF NEW YORK

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JOHN KUZMICH, ET AL.,

Appellants,

-against-

50 MURRAY STREET ACQUISITION LLC,

NO. 50

Respondent.

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WILLIAM T. WEST, ET AL.,

Appellants,

-against-

B.C.R.E. - 90 WEST STREET, LLC,

NO. 51

Respondent.

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20 Eagle Street  
Albany, New York  
June 4, 2019

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



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Official Court Transcriber



1 CHIEF JUDGE DIFIORE: 50 and 51, Kuzmich v.  
2 Murray Street - - - 55 - - - 50 Murray Street, and West v.  
3 B.C.R.E.

4 Counsel?

5 MR. SMITH: Good afternoon, Your Honors. Could I  
6 reserve three minutes for rebuttal?

7 CHIEF JUDGE DIFIORE: You may, sir.

8 MR. SMITH: I want to begin with the text of the  
9 law. Actually, I'll begin by finding my - - - well, I - -  
10 - I'm going to begin with the text of the law anyway, which  
11 is - - -

12 JUDGE STEIN: You probably say it in your sleep,  
13 right, counsel?

14 MR. SMITH: Yeah. First time, I'm nervous.

15 The - - - the text is at page 4, I believe, of my  
16 main brief. "Notwithstanding the provisions of any local  
17 law for the stabilization of rents in multiple dwellings or  
18 the Emergency Tenant Protection Act of 1974, the rents of  
19 each dwelling unit, in an eligible multiple dwelling, shall  
20 be fully subject to control under such local law, unless  
21 exempt under such local law from control, by reason of the  
22 cooperative or condominium status of the dwelling unit."

23 Your Honors, it's extremely hard to make those  
24 words say, as my adversaries argue they say, that those  
25 dwellings will - - - those multiple dwellings would be



1 fully subject to control, except for the huge majority of  
2 them that can be rented for 2,000 dollars or more a month.

3 JUDGE GARCIA: But counsel, it seems to me they  
4 have one pretty good argument, right, which is, when they  
5 amend - - - when they put this luxury decontrol in place,  
6 they don't mention the statute. And I know this one wasn't  
7 in effect at the time that was enacted, but one, they  
8 could've gone back and changed that or, you know, when they  
9 enacted this, or two, there's a similar - - - I think it's  
10 654 statute that is - - - also isn't mentioned in the  
11 luxury decontrol. So how do you address that argument?

12 MR. SMITH: Well, they could - - - you know, I  
13 mean, Your Honor correctly says, it's not real - - - this  
14 is not really an expressio unius est exclusio alterius  
15 situation because the alterius didn't exist when they  
16 expressed the unius. That is - - -

17 JUDGE GARCIA: That was on the tip of my tongue.

18 MR. SMITH: Yeah. The - - - but the - - - yeah,  
19 they could have gone back and amended it and they didn't.  
20 But what you've got there is an inference from leg - - -  
21 from legislative inaction, which is about as weak of a read  
22 as you can have for a - - - for a statutory argument,  
23 because of course, legislative inaction can mean everything  
24 or nothing.

25 And the mo - - - to me, the most reasonable, and



1 the clearest reason they didn't go back and amend the  
2 former statute, is they'd said it once, and they did not  
3 necessarily think they had to say it twice, even though,  
4 maybe they did say it twice back in 1993, when they  
5 originally enacted the high rent decontrol.

6 The fact is that the - - - the statute they did  
7 enact in 1995 for - - - I can never remember numbers, but  
8 it's g(6), says it quite as clearly as - - - as it can be  
9 said. And I think you can - - - it becomes clearer the  
10 more you read it. And I want to illustrate that by trying  
11 to look at ways it could have been written.

12 The statute could have said, "Eligible dwelling  
13 units shall be fully subject to the provisions of any local  
14 law for the stabilization of rents." And I just imagine  
15 one with no - - - no "notwithstanding" clause, just that  
16 simple sentence, "fully subject to the provisions of."  
17 There are statutes that say that. The - - - my adversaries  
18 quote some of them.

19 If the statute just said that, "fully subject to  
20 the provisions of any local law for the stabilization of  
21 rents," they would have a - - - a strong verbal argument,  
22 and I would be standing here saying, don't fuss about the  
23 exact language, because they couldn't have meant this,  
24 which is - - - I still think, not a bad argument. They  
25 could not have meant to eviscerate the very rent control



1 they were enacting. But they would have a strong verbal  
2 argument.

3 The problem is, it doesn't say that. It doesn't  
4 say "fully subject to the provisions of". It says, "fully  
5 subject to control under such local law." And that makes  
6 my verbal argument much stronger, because it - - - I  
7 suggest if there is one thing subject to control, it  
8 doesn't mean it's subject to decontrol.

9 And now let's remove the - - - the myth that  
10 there's no not - - - "notwithstanding" - - - there is a  
11 notwithstanding clause. The notwithstanding clause, I  
12 haven't read it in - - -

13 JUDGE FEINMAN: Well, what about the argument  
14 that subject to control, control means govern, as opposed  
15 to, you know, rent control or rent stabilization?

16 MR. SMITH: I don't think you get there, Your  
17 Honor. I mean, you - - - the easy thing to say, subject to  
18 the provisions of, if that's what you mean. Subject to  
19 control under, I don't see how it could mean anything  
20 except subject to control of rents pursuant to the local  
21 law. Control in this context has to mean control of rents.  
22 It's not control of something else.

23 The notwithstanding clause says "Notwithstanding  
24 the provisions of any local law for the stabilization of  
25 rents in multiple dwellings or the Emergency Tenant



1 Protection Act of 1974," and of course, high rent decontrol  
2 is a provision of both of those things. And how did those  
3 get to - - - how could those not be, if I may use the - - -  
4 the strange verb that is sometimes used in Al - - - in  
5 Albany, how can those not be notwithstanding by that  
6 notwithstanding clause? How can they not - - - and if - -  
7 - and if the notwithstanding clause doesn't do that, what  
8 does it do?

9 And that's a question we keep screaming and my  
10 adversaries, I think, have not answered. They never tell  
11 us how this law would be any different if there were no  
12 notwithstanding clause in it. It - - - on - - - in their  
13 world, the notwithstanding clause is the Maytag repairman.  
14 It has absolutely nothing to do. It might as well not be  
15 there.

16 The - - - and then - - - I'm not done with the  
17 text.

18 JUDGE RIVERA: Let's - - - let's say we agree  
19 that the - - - that the text is not ambiguous. There's  
20 only one way to read it, as you suggest. Do we still have  
21 to look at the legislative history?

22 MR. SMITH: I don't mind. That - - - there is -  
23 - - there is authority that says no matter how clear it is,  
24 go ahead and look at the legislative history. Fine. I - -  
25 - I - - - I am - - - I'm all in with looking at the



1 legislative history. In fact, I think I'll even skip over  
2 the co-op and condominium exception with just a passing  
3 remark why, you know, if - - - if - - - if they put that  
4 one there, why didn't they mention the other exception?

5 And now let me turn to the legislative history.  
6 I think to understand it, you have to begin with a  
7 perfectly obvious fact that everybody knew in 1995, the  
8 Assembly was friendly to rent control and the Senate was  
9 hostile to rent control. And that's very basic to  
10 everything that went on here.

11 The Assembly - - - the - - - the - - - the pro-  
12 rent-control house passes this bill, the bill I've been  
13 reading aloud for the last few minutes. The Assembly has  
14 no reason to believe it means anything other than what it  
15 says. There's even a letter from the City, reinforces the  
16 point, at page 7 of my brief. It's - - - the letter says,  
17 "Dwelling units in the buildings, receiving benefits under  
18 this program, would be subject to rent stabilization during  
19 the benefit period," not to the provisions of the rent  
20 stabilization laws, to rent stabilization. And that's - -  
21 - and that's all the legislative history you got in the  
22 Assembly. We've got the absolutely plain text of the bill,  
23 and the sentence that reinforces it.

24 The Senate passes the bill. The bill goes to the  
25 Senate, which is much less friendly to rent control. It



1 goes particularly to Majority Leader Bruno, who's - - - who  
2 doesn't like rent control, and he doesn't like the bill.  
3 He says, the - - - he doesn't like it because it doesn't  
4 provide for high rent decontrol. And he says the bill  
5 isn't going to pass unless it's amended. The newspapers  
6 quote him as saying that. And my adversaries say, you  
7 can't read that on the - - - that's - - - that's too much  
8 legislative history. You're not allowed to look at the  
9 newspapers. Newspapers don't count.

10 They're completely wrong. Newspapers do count in  
11 legislative history. Discussion in the public press is a  
12 totally appropriate way of understanding what people  
13 thought a law meant at the time a law was passed. What the  
14 public thinks is - - - is - - - matters. They're - - -  
15 they're - - - they're the bosses. They're the people the  
16 legislatures are working for.

17 The - - - and we - - - we cite cases on that.  
18 It's in page 23 of our - - - I think it's our reply brief  
19 in Kuzmich in the footnote, and they don't - - - they don't  
20 cite anything that says you can't read newspapers. They  
21 say, oh, that's newspapers.

22 JUDGE WILSON: Counsel, let me just skip ahead to  
23 the mayor's letter, because I'm not sure that I read it as  
24 inconsistent with the position you're taking anyway,  
25 because it - - -

1 MR. SMITH: But it is.

2 JUDGE WILSON: - - - because it - - - well, to  
3 me, at least, it doesn't answer the question of when these  
4 things become subject to rent stabilization. That is, the  
5 letter says, the - - - these properties will become sa - -  
6 - subject to rent stabilization just as any other  
7 properties. But it doesn't say when that will happen.

8 MR. SMITH: I see your point, Judge.

9 JUDGE WILSON: Right?

10 MR. SMITH: Well, I hadn't thought of it. I  
11 think that's a good point. That ev - - - the ma - - - the  
12 mayor's letter is in a sense, true. Although - - -

13 JUDGE WILSON: And - - - and there's a provision  
14 in subsection g, that has a special mechanism for removing  
15 these properties. That is, if you put a special thing in  
16 twelve-point type in the lease, they will come out.

17 MR. SMITH: Yes.

18 JUDGE WILSON: And isn't a way to read the  
19 mayor's letter to say, we want to make sure that that's not  
20 the only way you can get out of this. You can also get out  
21 by the normal ways of getting out, once the exemptions - -  
22 - once the - - - the tax benefits are done.

23 MR. SMITH: I think that's true, Judge. I think  
24 the - - - the mayor's letter is consistent with that. I  
25 can't really stand here and tell you that I really think



1 that's all the mayor and - - - and this majority leader  
2 were trying to say. I think they were trying to achieve  
3 high rent decontrol, but they were trying to achieve it in  
4 a statute that does not provide for it, by putting it into  
5 the legislative history.

6 And even the legislative history, as you point  
7 out, is a little ambiguous. But let's - - - let's assume  
8 it's - - - it's not ambiguous.

9 JUDGE RIVERA: Let's say you have a situation  
10 where the Assembly, as - - - as you say, votes for a piece  
11 of legislation that they believe means rent stabilization  
12 is going to apply. And the Senate says, we would never  
13 vote for such a bill. We'll vote for the bill, if it means  
14 luxury decontrol applies. That's the way we interpret it.  
15 What are we to make of that?

16 MR. SMITH: Well, the - - -

17 JUDGE RIVERA: If you have these two bodies - - -

18 MR. SMITH: - - - the tie - - - the tie breaker  
19 is the text, Your Honor. You read the statute is - - - is  
20 how you figure it out. And reading - - - and I love  
21 reading the statute. I'll read - - - I'll - - - I'll read  
22 it again if you let - - - well, I won't, but I - - - I - -  
23 - you get the idea.

24 JUDGE FAHEY: But aren't we in the position then  
25 then, we're reversing the normal approach to the analysis



1 here? If we take that approach, counselor? Are - - -  
2 aren't we saying, it seems your first argument is a plain  
3 language argument. Your second argument is a legislative  
4 history argument. Generally, we don't get to legislative  
5 history unless there's ambiguity in the plain language.  
6 And then there's, of course, the - - - then - - - then we  
7 have to address the agencies, the series of agencies, are -  
8 - - letters that have come up. We - - - you haven't gotten  
9 to those yet.

10 But do we need to even weigh into the morass of  
11 legislative history? People have legitimate political  
12 differences about how these public policy questions are  
13 going to be resolved, and that's why, we, as a court,  
14 always rely first and foremost on the language.

15 MR. SMITH: I am - - - I - - - I'm - - -  
16 absolutely think you - - - you can and should rely on the  
17 language here, and if you certainly - - - if you never  
18 glance at the legislative history, this would be a pretty -  
19 - -

20 JUDGE FAHEY: Well, the prob - - -

21 MR. SMITH: - - - pretty easy case.

22 JUDGE FAHEY: The problem - - - the problem with  
23 legislative history here is because of the letters, say,  
24 between the - - - the mayor and the - - - the majority  
25 leader, you get into a discussion about what is authentic



1 legislative history as opposed to inauthentic legislative  
2 history. I'm not sure I agree with you about newspaper  
3 articles, one way or another. More compelling to me is,  
4 what did the sponsors say? I mean, what - - - what were  
5 the committee reports from the legislative body? Those  
6 kind of - - - that kind of legislative history seems to me  
7 is - - - is relatively more authentic.

8 But for the court to determine the authenticity  
9 of legislative history, it seems to me that a long reach  
10 for us to be doing that, when really, we haven't even  
11 decided that the language itself is ambiguous.

12 MR. SMITH: Okay, well, I - - - I - - - I do  
13 think the language is unambiguous, and indeed, I think  
14 that's what Judge Edmead, and if I'm remembering correctly,  
15 Jus - - - Judge Reed also thought. I do think it's  
16 unambiguous.

17 I also think that if you do look at the  
18 legislative history, you have to - - - you should give  
19 considerable weight to the fact that Senator Bruno and  
20 Senator Leibell thought - - - first thought clearly, first  
21 thought that the bill needed to be amended. And even if  
22 you don't read newspapers, you can read the - - - Mayor  
23 Giuliani's letter saying, you asked that the bill be  
24 amended, and I'm very eager to ask questions which I can  
25 never ask, like what made you think it should be amended,



1 Senator?

2 JUDGE FAHEY: So we take to the next phase, then.  
3 What about the agency interpretations?

4 MR. SMITH: The agency interpretations, I don't -  
5 - - I just don't think they outweigh either the text of the  
6 bill or what went on, especially when you look at the  
7 context. The mayor's letter makes a commitment, and says,  
8 don't worry, we're going to - - - the City will interpret  
9 it this way. And then they - - - my light is on, but can I  
10 fin - I just finish the answer to that?

11 CHIEF JUDGE DIFIORE: Yes, please.

12 MR. SMITH: The - - - they say, and the agency  
13 does interpret it that way. The interpretation is to write  
14 in the whole new exception for high rent decontrol. It's  
15 not really interpretation at all. It's the text of the  
16 statute with another exception added. It's hard to call  
17 that interpretation.

18 DHCR, I can't be quite that - - - that sharp  
19 about, but the fact is, all they had was an ex parte  
20 presentation from the landlords. I'm not accusing anyone  
21 of doing anything bad, of course, perfectly appropriate for  
22 the landlords to go to an agency and ask for it to be  
23 interpreted their way. But the - - - the agency wrote them  
24 a letter, saying look, this is as far as - - - this is what  
25 it means as far as we know. Don't take this to the bank;

1 this is not an official interpretation; it's just a letter.  
2 I don't think it has that much weight.

3 CHIEF JUDGE DIFIORE: Thank you, counsel.

4 MR. SMITH: Thank you.

5 CHIEF JUDGE DIFIORE: Counsel?

6 MR. MCGUIRE: May it please the court, James  
7 McGuire for 50 Murray Street. I'm going to step out of my  
8 order a little bit just to answer a couple of - - - of  
9 questions here, and respond to a couple of points by - - -  
10 by Mr. - - - Mr. Smith.

11 Senator Bruno did not say that the bill needs to  
12 be amended, because it didn't provide for luxury  
13 decontrolling - - - empathically did not say that. He said  
14 that he wanted to see it amended to ensure, to ensure that  
15 the bill provide for the most recent updated versions of  
16 the rent stabilization bill. Because he had - - - may have  
17 had some uncertainty about it, does - - - doesn't mean that  
18 it didn't provide that.

19 JUDGE RIVERA: Let's get to the plain language.  
20 I'm - - - I'm have - - -

21 MR. MCGUIRE: Okay.

22 JUDGE RIVERA: I'm having great difficulty with  
23 your proposed interpretation, because it seems to render  
24 meaningless, or at least superfluous, the whole  
25 notwithstanding language.



1 MR. MCGUIRE: Okay. And I - - - and I - - - I  
 2 want to also respond to that too, because it does not - - -  
 3 empathically our position does not render the  
 4 notwithstanding provision meaningless. It gives it full  
 5 meaning. Without the notwithstanding - - - the notwith - -  
 6 - the - - - the cur - - - existing provision is a flaw,  
 7 that says - - - that say post-1974 construction and develop  
 8 - - - development are not subject to rent - - - rent  
 9 stabilization. So that's what this does. It gets rid of  
 10 that.

11 And I want to talk about the text too. But I  
 12 want to talk about - - - I think we have a different  
 13 understanding about what are - - - what are the principal  
 14 texts here. I think - - - I think you look at 427-g alone  
 15 - - -

16 JUDGE RIVERA: Well, doesn't notwithstanding mean  
 17 regardless of everything else? And so regardless of  
 18 everything else means that these properties are subject to  
 19 rents stabilization for the period of time set out in the  
 20 paragraph unless it's a co-op or a condo? I'm just not  
 21 understanding your argument.

22 MR. MCGUIRE: Okay, well, okay, that's fine.  
 23 It's a - - - it's a fair question, Judge Rivera. And so -  
 24 - -

25 JUDGE RIVERA: I thought so.

1 MR. MCGUIRE: Okay. So we say fully subject, and  
2 we say it means subject to the be - - - to the - - - to the  
3 burdens, and also to - - - and also to the - - - to the  
4 benefits. My adversary puts a lot of weight on the word -  
5 - - on the word "control" and he even says, so coined  
6 Cambridge law - - - dictionary, that it means limits. But  
7 as we quoted - - - you know, the Oxford English Dictionary,  
8 consonant with what I think what I heard Judge Feinman  
9 saying before on our briefs below - - -

10 JUDGE FEINMAN: I'm not saying that that's my  
11 view.

12 MR. MCGUIRE: No, I understand.

13 JUDGE FEINMAN: I'm just saying that's your  
14 argument.

15 MR. MCGUIRE: And consonant - - - no, and I  
16 didn't mean to suggest that it was your view; I'm sorry,  
17 Judge. But the Oxford English Dictionary defines it as  
18 control, quote, "the function or power of directing and  
19 regulating." So we're saying regulating - - -

20 JUDGE RIVERA: Yeah, but - - - but high-income  
21 rent is called deregulation, not - - -

22 MR. MCGUIRE: Excuse me?

23 JUDGE RIVERA: - - - regulation, right?

24 MR. MCGUIRE: Deregulation is part of the reg - -  
25 -



1 JUDGE RIVERA: I mean, I have the - - - it's a  
2 compelling - - -

3 MR. MCGUIRE: - - - the entire - - - is the  
4 entire scheme.

5 JUDGE RIVERA: It's a compelling use of language  
6 that counsel makes, when he says control

7 MR. MCGUIRE: I - - - I - - - I - - -

8 JUDGE RIVERA: - - - doesn't mean decontrol.

9 MR. MCGUIRE: I'm certainly not saying there are  
10 no text-based arguments on - - - on behalf of the position  
11 that my adversaries make.

12 JUDGE STEIN: Counsel, let me ask you - - -

13 MR. MCGUIRE: I do want to focus on - - - on - -  
14 - on the list of exceptions.

15 JUDGE STEIN: Let me - - - let me just ask you -  
16 - -

17 MR. MCGUIRE: Sure.

18 JUDGE STEIN: - - - while we're on that subject,  
19 on the notwithstanding language. Your adversary says you  
20 don't answer how the law would be different without that  
21 clause. Can you answer that question? How would the law  
22 be different if you took the notwithstanding language out  
23 of that provision?

24 MR. MCGUIRE: They would be subject to rent  
25 stabilization.



1 JUDGE STEIN: Then it would - - - it would be  
2 subject to rent stabilization or it wouldn't?

3 MR. MCGUIRE: Without that - - - without that  
4 they wouldn't be subject to rent stabilization at all.

5 JUDGE FEINMAN: Because it's built after '74?

6 MR. MCGUIRE: Yes, yes.

7 CHIEF JUDGE DIFIORE: Counsel, move to - - -

8 JUDGE STEIN: But then why - - - okay, I'm sorry.  
9 Okay.

10 CHIEF JUDGE DIFIORE: Why don't you move to the  
11 exceptions?

12 MR. MCGUIRE: Okay, but - - - can I just back - -  
13 - give you a little background for - - - a minute of  
14 background for that, because I think it will help?

15 CHIEF JUDGE DIFIORE: Of course.

16 MR. MCGUIRE: So, you know, when the legislature  
17 enact - - - enacted this program, they obviously - - - they  
18 obviously hoped it was going to succeed, and a vibrant  
19 community was going - - - was going to ensue. And it did  
20 succeed. It did - - - it succeeded probably beyond their  
21 wildest expectations.

22 CHIEF JUDGE DIFIORE: So the purpose is  
23 revitalization?

24 MR. MCGUIRE: Yes, right of this ghost town. And  
25 - - - and it became so - - -



1 JUDGE RIVERA: But - - - but it is possible that  
2 that's not the only purpose, correct?

3 MR. MCGUIRE: No, of course, it is. It - - - of  
4 course it's not the only pur - - - that was a principal  
5 purpose of the goal - - - of the buildout. And - - - and  
6 indeed as the 50 Murray buildings show, the first rents  
7 were - - - it was so attractive that over - - - for over  
8 many rents were - - - were over 5,000 dollars, over 4,000  
9 dollars. And it's not true that all of them were. There's  
10 - - - the - - - in the records, is 125,000 units created,  
11 and about 15 - - - about 15,000 were - - - ended up being  
12 stabilized, because - - - because it was so successful,  
13 that 15,000 were - - - were for initial rent.

14 But here's the key point, right. So some of them  
15 - - - it's such an attractive place, 4,000, 5,000. In - -  
16 - in the decision of Judge - - - Judge Hagler mentioned,  
17 it's Henry 85 LLC Street, he ruled the same way as the  
18 Appellate Division in this case. It was a - - - it was a  
19 two - - - three-bedroom duplex with two terraces, and the  
20 rent, 6,800 dollars a year. For all we know, there are  
21 penthouses that were down there being rented for over  
22 10,000 dollars.

23 Does it make any sense whatsoever to think that  
24 either house thought that people who were paying that kind  
25 of rent were deserving of the solicitude and the



1           protections of the rent stabilization law? No, it makes -  
2           - -

3                   JUDGE GARCIA: But then why put - - -

4                   MR. MCGUIRE: - - - it makes no - - -

5                   JUDGE GARCIA: Counsel, why put that provision in  
6           at all? If it's just going to be, well, maybe these rents  
7           are going to be over the luxury threshold, why even put it  
8           in? I mean, they had an idea about putting that provision  
9           in - - - it seems fairly clear from the statute - - - that  
10          in exchange for this benefit, there was going to be some  
11          type of control over these apartments.

12                  MR. MCGUIRE: And - - - and - - -

13                  JUDGE GARCIA: And not just the ones the  
14          landlords decided we're going to come in under a certain  
15          level, because the controls apply to certain increases over  
16          time. And isn't it a fairer reading of that statute that  
17          that's what they intended?

18                  MR. MCGUIRE: Well, they - - -

19                  JUDGE GARCIA: And it wasn't going to leave it up  
20          to the landlord to charge 10,000 dollars a unit, so they  
21          can decontrol it?

22                  MR. MCGUIRE: Why - - - why - - - oh, okay. They  
23          certainly envisioned that these rents could be - - - could  
24          be possible. So Judge - - - Senator Leichter thought that  
25          was exactly what was going to happen, right. And my point

1 is, why do you - - - why would they think that somebody  
2 paying 6, 7,000 dollars a year needs the protections? It  
3 doesn't make any sense. The legislation that two years  
4 earlier provided for luxury decontrol.

5 But - - - but I - - - I do think that you need -  
6 - - we all know you have to read individual statutes as  
7 part of the statutory scheme. It's an ancient and hoary  
8 canon of construction. And what happens? Is that in 1993,  
9 we have this historic legislation that creates luxury  
10 decontrol. And the legislature says, whoa, whoa, whoa,  
11 wait a minute, you know. We're going to have - - -  
12 everything's going to be subject to luxury decontrol,  
13 except for three - - - three classes of buildings, right.  
14 The loft - - - Loft Law ones, and then the two that are  
15 most critical here, 489 and - - - and the 4 - - - and the  
16 421-f - - - 4 - - -

17 CHIEF JUDGE DIFIORE: A.

18 JUDGE FEINMAN: A.

19 MR. MCGUIRE: - - - 421-a - - - a buildings,  
20 right.

21 And those are buildings that are - - - are not  
22 eligible for luxury decontrol, because it - - - by virtue  
23 of the receipt of tax benefits, right. By virtue of the  
24 receipt of tax - - - two years later, after that historic  
25 and controversial bill, they enact this one as part of the



1 same statutory scheme. And they don't - - - they don't - -  
2 - they leave that - - - the leave the list of exceptions  
3 alone. You have to conclude that list of exceptions is  
4 exclusive. They leave it alone. Read the statutes  
5 together.

6 And Judge, there's another - - - Judge, there's -  
7 - -

8 JUDGE GARCIA: Just to go back to that point.

9 MR. MCGUIRE: Okay.

10 JUDGE GARCIA: One, perhaps they thought, as your  
11 adversary argues, that they already were exempting it under  
12 the language of the statute that they had passed. And I  
13 find it a very difficult argument, notwithstanding the  
14 notwithstanding clause, to get to the end of this, where  
15 they carve out later on, the condominium exception. Why  
16 bother to do that if you're correct? Why bother to carve  
17 out one of these exceptions?

18 MR. MCGUIRE: The condominium provision had  
19 always been carved out. That was just background - - -  
20 that was just background law.

21 JUDGE RIVERA: No, no, but that's the point.  
22 It's - - - it's already part of the law. Why - - - why  
23 choose one particular exception, which you say is embedded  
24 in this, and say, oh, we just want to repeat. We just want  
25 to emphasize, which is your argument, that we really,



1 really mean that with respect to the condos and the co-ops,  
2 right? I think that's where Judge Garcia's going with his  
3 question.

4 MR. MCGUIRE: Okay, and - - - and here's the  
5 answer to that, and I think it's dispositive. The language  
6 of the notwithstanding clause of 421 - - - 421-g - - - 420-  
7 a(2) - - - 421-a(2) (f) is absolutely identical to the one  
8 in 421-g(6).

9 JUDGE STEIN: But isn't it just - - -

10 MR. MCGUIRE: Identical provisions are treated  
11 disparately with respect to the - - -

12 JUDGE FEINMAN: So but then - - - okay, assuming  
13 that that is correct, that those two notwithstanding  
14 clauses are identical, but then what do you do with this  
15 thereafter clause, the - - - that's in subdivision 6? How  
16 does that make any sense?

17 MR. MCGUIRE: Well, you just have - - - it's - -  
18 - you have to - - - you have to read them all together is -  
19 - - is the point - - - is the point, Judge Feinman, is that  
20 it's part of the statutory scheme. And I think you have to  
21 conclude, the legislature knows its own enactments. That's  
22 a basic precept of con - - - of construction. The  
23 legislature depends upon the courts understanding that when  
24 the legislature writes them, and when the courts author  
25 them.



1           They knew, two years later, one year after luxury  
2           decontrol was greatly expanded by city council, pursuant to  
3           Local Law number 4, they leave that alone - - -

4           JUDGE STEIN:   What I don't understand - - -

5           MR. MCGUIRE:   And so my - - - my adversary's  
6           position is, is that, okay, well, maybe they just wanted to  
7           clarify in 1993.  That can't be right - - -

8           JUDGE STEIN:   Well, what I don't understand,  
9           counsel - - -

10          MR. MCGUIRE:   - - - because then they confused in  
11          - - - then they would be con - - - intending to confuse in  
12          1995 - - -

13          JUDGE STEIN:   Excuse me.

14          MR. MCGUIRE:   - - - when they didn't add to the  
15          list of exceptions.

16          JUDGE STEIN:   What I don't understand is, under -  
17          - - as I understand your argument, and under your reading  
18          of the statute, certain exemptions to the rent regulation  
19          regime apply.  For example, the one that is actually listed  
20          for condos and co-ops, and one that's not listed for  
21          buildings that were rehabilitated after 19 - - - after the  
22          1974, whatever the date was.

23          Yet other exceptions like luxury decon - - -  
24          deregulation, decontrol, don't apply.  How do you make  
25          those distinctions?



1 MR. MCGUIRE: They - - - well, they - - - they do  
 2 - - - the luxury decontrol does apply because of - - - and  
 3 then the most telling indication of that is because it's  
 4 not on the list, the exclusive list, of exceptions that the  
 5 legislature created in 1993. The court has to deal with  
 6 that. The court has to make sense of that.

7 JUDGE STEIN: So that's - - - that's - - - that's  
 8 really - - -

9 MR. MCGUIRE: And there's only one reason we  
 10 conclude - - -

11 JUDGE STEIN: That's the nub of your argument.  
 12 Without that - - -

13 MR. MCGUIRE: No, my - - - no, no, no, that's  
 14 not. The nub of my argument, it's - - - it's a key part of  
 15 my argument. But it's not all I've got. I've got the  
 16 legislative history. And the legislative history is  
 17 absolutely rock crushing. This is not simply one house  
 18 legislative history. If I - - - if I - - - if I may? I'll  
 19 - - - I'll try to be as quick as I - - -

20 JUDGE STEIN: Well, I mean, we understand - - -

21 MR. MCGUIRE: Okay.

22 JUDGE STEIN: - - - about the letters and who  
 23 said what and - - - and all of that. But the fact of the  
 24 matter is, is that the bill was not amended, was not  
 25 changed, did - - - did not clarify anything, as far as I



1 understand, after this correspondence went on. So it seems  
2 to me that maybe they thought they had something they  
3 didn't have.

4 MR. MCGUIRE: But the premise is wrong. The  
5 premise is wrong, Your Honor. Mr. Smith has been saying  
6 that Bruno - - - Bruno to - - - Bruno said the legislat - -  
7 - needs to be amended to provide for luxury decontrol. He  
8 did not say that. He said it needs to be amended, in  
9 effect, to make certain that it does.

10 JUDGE WILSON: What - - - what is the - - - what  
11 is the - - -

12 MR. MCGUIRE: And you can make it certain - - -  
13 you can make it - - -

14 JUDGE STEIN: But it wasn't. But it wasn't.

15 MR. MCGUIRE: Well, legislative history is a way  
16 - - - a way of doing it. And it's - - - and it's - - - and  
17 you - - -

18 JUDGE WILSON: What is the rock crushing part of  
19 the Assembly legislative history that supports your  
20 position?

21 MR. MCGUIRE: Well, the - - - the rock crushing  
22 part of it on this incredibly important - - - you have my  
23 adversary says - - - says, the one - - - one - - - the  
24 Assembly is in favor of - - - of - - - of - - - of the  
25 tenant protections, and the Senate is adverse to it. Not a



1 single republican vote in the Assembly against it. Not a  
2 single vote. There is ample opportunity for the Assembly  
3 to fill that bill jacket, for tenants groups to fill that  
4 bill jacket, as they often do with their positions.  
5 Silence. Not a word on this extraordinary controversial  
6 subject. This is one-house of legislative history?

7 JUDGE STEIN: What about the support - - -

8 MR. MCGUIRE: That's telling legis - - - that's  
9 telling support.

10 JUDGE WILSON: I don't think rocks - - -

11 JUDGE STEIN: What about the supporters'  
12 memorandum?

13 MR. MCGUIRE: Excuse me?

14 JUDGE STEIN: What about the memorandum in  
15 support of the bill?

16 MR. MCGUIRE: Which - - - right. Look - - -

17 JUDGE STEIN: That doesn't say anything?

18 MR. MCGUIRE: It - - - it does, but I don't - - -  
19 but it's - - - but it's not - - - it's certainly not - - -  
20 it doesn't address this - - - this - - - the only  
21 legislative history that's squarely on the point before the  
22 court, which is whether or not luxury decontrol is supplied  
23 - - - is provided in the Senate, and it's unequivocal - - -  
24 it's in the floor debate. It's the mayor stating his  
25 position. It's Franz Leichter agreeing with it.



1 JUDGE STEIN: Since when is the mayor a part of  
2 the legislature?

3 MR. MCGUIRE: He's - - - he's - - - he's part of  
4 - - - the City was part of the drafters. And this court  
5 has recognized that drafters of it - - - drafters of it is  
6 part of the legislative history. But it doesn't - - -

7 JUDGE STEIN: But - - - but his counsel - - -

8 MR. MCGUIRE: But - - -

9 JUDGE STEIN: - - - said something differently  
10 earlier on.

11 MR. MCGUIRE: No, he - - - no, he doesn't. No,  
12 he doesn't.

13 JUDGE RIVERA: His own official says it's subject  
14 to rent stabilization.

15 MR. MCGUIRE: I'm sor - - - well, there's nothing  
16 new fav - - - that I don't know - - -

17 JUDGE RIVERA: His own official says these  
18 properties will be subject to rent stabilization.

19 MR. MCGUIRE: I don't know if they were - - - I  
20 don't know if they were quoted - - - quoted correctly or  
21 not. But the point is, it's not just the mayor, Judge - -  
22 - Judge Stein. It's not just the mayor. It's the Sen - -  
23 - Senator Bruno is the letter - - - there's a letter in the  
24 bill jacket from Senator Bruno that says, this comports to  
25 our own understanding. Franz Leichter is the only senator



1 who disagrees. Marty Connor - - -

2 JUDGE RIVERA: Un - - - understanding or - - - or  
3 alternative hope?

4 MR. MCGUIRE: Excuse me?

5 JUDGE RIVERA: Understanding or alternative hope?

6 MR. MCGUIRE: It's - - - no, he - - - he's - - -  
7 he's understanding that they're going to be over the  
8 threshold and they're going to be decontrolled. That's  
9 what he - - -

10 JUDGE RIVERA: As - - - as Judge Stein pointed  
11 out, he's not a senator. He was not a senator - - -

12 MR. MCGUIRE: Franz Leichter was. Franz Leichter  
13 was.

14 JUDGE RIVERA: I thought you were talking about  
15 the mayor - - -

16 MR. MCGUIRE: No, I'm talking about Franz  
17 Leichter. He was a senator. He was the only one who  
18 expressed - - - nobody contradicted him. Senator Connor,  
19 the sponsor of it, he doesn't contradict him. He never  
20 sends any of them. In the bill jacket, it includes a  
21 letter from - - - from Marty Connor's counsel, the Senate  
22 majority counsel. He says nothing about the subject. This  
23 incredibly important subject, he says nothing. He doesn't  
24 disagree. Nobody on the floor disagrees.

25 To rule in favor of my adversary, you have to say



1 that legitimate legislative history in the Senate that's  
2 squarely on point with, at best in a bill that's got  
3 ambiguity; he's got some points, my adversary. But you  
4 have to say, even though you've said legislative history is  
5 always relevant, even when the text is clear, you've got to  
6 say, disregard that.

7 JUDGE RIVERA: And if - - - if the legislative  
8 history - - -

9 MR. MCGUIRE: And if people making seven, eight,  
10 nine - - -

11 JUDGE RIVERA: Counsel, con - - -

12 MR. MCGUIRE: I'm sorry.

13 JUDGE RIVERA: If the legislative history is  
14 completely at odds with the text, and the only sensical  
15 reading of the text, which do we choose between?

16 MR. MCGUIRE: The legislative history is  
17 completely consonant with the text.

18 JUDGE RIVERA: No, no, that is not my question.  
19 I'm - - - I'm giving you a hypothetical.

20 MR. MCGUIRE: Okay.

21 JUDGE RIVERA: If the legislative history is  
22 completely at odds with the text, and the only sensical  
23 reading of the text - - -

24 MR. MCGUIRE: Go with the text. You go with the  
25 text.



1 JUDGE RIVERA: Thank you.

2 MR. MCGUIRE: Absolutely.

3 CHIEF JUDGE DIFIORE: Counsel? I mean, Judge?

4 JUDGE FEINMAN: Yeah. On the text, all right - -  
5 - I'm not asking about legislative history. I'm - - - I'm  
6 still not sure I understand your answer. In - - - in  
7 subdivision 6, the first part corresponds to the same  
8 language that you find in 421-a. But there's this  
9 sentence, "Thereafter such rent shall continue to be  
10 subject to such control, except that" and it goes on and  
11 explains, and it talks about how you decontrol. And, you  
12 know, the sentence goes on for quite a bit.

13 MR. MCGUIRE: Okay.

14 JUDGE FEINMAN: Why would they be talking about  
15 decontrol, if it's not controlled in the first place?

16 MR. MCGUIRE: Because some will be controlled,  
17 Judge. Some are controlled. A - - - a significant  
18 percentage of them were controlled. And these are  
19 instructions - - - the ones with first rents that were - -  
20 - that were under the threshold. And so you need to have a  
21 rule for what happens. And they - - - at the time that  
22 it's drafted, they don't know how successful it's going to  
23 be. It could be that the vast preponderance are going to  
24 be under 2,000.

25 JUDGE FEINMAN: So - - - so - - -



1 MR. MCGUIRE: They don't know.

2 JUDGE FEINMAN: So maybe I'm not understanding  
3 your position completely then. I thought your position  
4 was, not only is it, you know, subject to luxury decontrol,  
5 but it's really not subject to any control.

6 MR. MCGUIRE: No, no, no. That's - - - that - -  
7 - that we - - - we have so consistently said and our  
8 adversary is seemingly imputing to us a position we've  
9 never taken.

10 JUDGE FEINMAN: Okay.

11 MR. MCGUIRE: We've always said all the  
12 legislative - - - the Senate - - - the Senate was  
13 consistent always. It was subject to rent stabilization.  
14 But it was also subject to decontrol. Senator Bruno would  
15 have preferred that there was no stabilization at all. He  
16 lost that battle. He couldn't get that.

17 JUDGE FEINMAN: It was a compromise - - -

18 MR. MCGUIRE: Right. He couldn't get all he  
19 wanted, but he got something consistent with what they did  
20 in 1993. They weren't doing a backstroke on what they did  
21 in 19 - - - Bruno and the Senate wasn't doing a backstroke.  
22 And the silence in the Assembly confirms that. Thank you,  
23 Your Honors.

24 CHIEF JUDGE DIFIORE: Thank you, Your Honor.  
25 Counsel?



1 MS. CRUZ: Good afternoon, Your Honors. I'm  
2 Magda Cruz, co-counsel for the respondent 50 Murray  
3 Acquisition in the Kuzmich appeal, and counsel for the  
4 respondent B.C.R.E. in the West appeal.

5 B.C.R.E. supports and joins in the arguments made  
6 by my colleague, James McGuire in the Kuzmich appeal  
7 concerning the construction of the Real Property Tax Law  
8 421-g, and the Rent Stabilization Law 26-504, not  
9 precluding high rent vacancy deregulation in these lower  
10 Manhattan buildings.

11 And I'd like to emphasize that the scope of the  
12 421-g program was very, very targeted. It was to address a  
13 - - - almost, I would say, an economic crisis that was  
14 happening in the '90s at the time that this legislation was  
15 proposed by the mayor of the city of New York under the  
16 Lower Manhattan Revitalization Plan. This statute, 421-g,  
17 is unlike 421-a, J-51. It is a very, very targeted piece  
18 of legislation. And we cannot ignore that history, because  
19 it is very telling why, in fact, it was not included in the  
20 list of exclusions in the Rent Stabilization Law 26-504.  
21 It was not included, of course, when it could have been  
22 included. Maybe - - -

23 JUDGE STEIN: But - - - but if - - - if we  
24 disagree with some of the arguments about the statutory  
25 language and - - - and any ambiguity, or - - - if - - - if



1 we feel that the statutory language is clear, then why  
2 would the legislature need to go back and amend the rent  
3 control law? In addition to what it may have thought it  
4 clearly said - - -

5 MS. CRUZ: Correct.

6 JUDGE STEIN: - - - in 421-g in the first place?

7 MS. CRUZ: Yes. My answer to that, Your Honor,  
8 is, I agree; it is clear. The notwithstanding clause is  
9 clear. It was clear when 421-a was enacted, to show that  
10 it would be subject to the entirety of the rent  
11 stabilization law.

12 JUDGE STEIN: But isn't there a different  
13 situation when a new law, such as - - - as the rent  
14 stabilization law. I mean, that was a pretty major piece  
15 of legislation, right. That comes along after the - - -  
16 the language in 421-a and - - -

17 MS. CRUZ: Yes.

18 JUDGE STEIN: Right?

19 MS. CRUZ: Yes.

20 JUDGE STEIN: So then it seems to me that there  
21 might be a reason to say, even though we're enacting this  
22 law now, we want to say that what came before it, is not  
23 swept und- - -

24 MS. CRUZ: Right.

25 JUDGE STEIN: - - - swept away, right?



1 MS. CRUZ: That's a logical assumption of how the  
2 legislature would have addressed the 421-a and J-51 and - -  
3 - and Loft Law exclusions.

4 But when identical notwithstanding language is  
5 enacted as part as 421-g, two years later, and that 421-g  
6 is not included in that list of exceptions, the  
7 presumption, and I submit to you, is that, in fact, as the  
8 Senate debate shows, 421-g was not intended to be excluded  
9 from luxury deregulation.

10 And it is, I think, because of the genesis of  
11 that law, the fact that it was a targeted, specialized  
12 piece of legislation, that it was meant to revitalize a  
13 situation in lower Manhattan that was critical. The  
14 financial center of this - - -

15 JUDGE RIVERA: I make the point - - -

16 MS. CRUZ: - - - of this country.

17 JUDGE RIVERA: - - - to you also, could there not  
18 be more than one purpose?

19 MS. CRUZ: Yes, Your Honor.

20 JUDGE RIVERA: One could seek to revitalize, and  
21 also to provide for affordable housing.

22 MS. CRUZ: Yes, Your Honor.

23 JUDGE RIVERA: Or to make - - -

24 MS. CRUZ: And that - - -

25 JUDGE RIVERA: - - - or put it under the umbrella



1 of - - - of rent stabilization?

2 MS. CRUZ: yes.

3 JUDGE FAHEY: Judge, can - - - can I just ask one  
4 question? I - - - just to clear up in my own mind. The  
5 bond purchasers - - - the prospectus to the bond  
6 purchasers. Doesn't it say there that 421-g also - - - the  
7 same 421-g rules apply for the duration of the tax benefits  
8 that you get as a result of a bond purchase?

9 MS. CRUZ: Yes, yes.

10 JUDGE FAHEY: And what's the effect of that?

11 MS. CRUZ: Well, the presumption is that rent  
12 stabilization is in - - - is a - - - a scheme of regulation  
13 that includes - - -

14 JUDGE FAHEY: Let me ask you a different way.

15 MS. CRUZ: - - - luxury deregulation under  
16 appropriate conditions.

17 JUDGE FAHEY: Let me ask you this. Do we fall  
18 back on a plain reading then of 421-g(6)?

19 MS. CRUZ: You can, Your Honor. Absolutely, you  
20 can fall back, but - - -

21 JUDGE FAHEY: And - - - and can your argument - -  
22 -

23 MS. CRUZ: - - - you must read it in conjunction  
24 with the Rent Stabilization Law 26-504.

25 JUDGE FAHEY: All right. So can your argument be



1 successful without a legislative history component?

2 MS. CRUZ: I submit it can, but the legislative  
3 history component sho - - - absolutely reinforces it. And  
4 Your Honor, I have - - - my light is on, but I would like  
5 to address Judge Rivera's question - - -

6 CHIEF JUDGE DIFIORE: Of course.

7 MS. CRUZ: - - - about an alternative goal of the  
8 law, and yes, Your Honor, absolutely. It could have also  
9 been intended to advance affordable housing in that area of  
10 the City. But it was, in fact, addressed by reason of the  
11 fact that it's going - - - the housing has to be subject to  
12 rent stabilization. But the entirety of rent  
13 stabilization, Your Honor. And in - - - in the case of 90  
14 West, of the 410 apartments that were created, 140 were  
15 below the threshold. Those did - - - were not luxury  
16 deregulated. So - - -

17 JUDGE RIVERA: Isn't your textual argument at the  
18 end of the day that the legislature, if it really wants to  
19 recognize an exemption or exclusion, has to say - - - state  
20 it expressly. It can't use notwithstanding clauses. It  
21 strikes me that if we adopted your reasoning, this would  
22 put in question other pieces of legislation, where the  
23 legislatures have used that clause.

24 MS. CRUZ: Yes, Your Honor, however, I don't  
25 think it would necessarily put a cloud over that kind of



1           legislation, because the rent stabilization law, luxury  
2           deregulation provision, created the list, exclusive list of  
3           the kinds of housing that was benefited by certain tax  
4           programs and the Loft Law, that would not enjoy luxury  
5           deregulation, for purposes of that particular set of  
6           apartments. Every single tax benefit has a goal. In this  
7           case, the goal was revitalization of lower Manhattan,  
8           preserving rent stabilization, but all - - -

9                   JUDGE RIVERA: But revitalization, of course,  
10           could also mean having affordable housing, where you have a  
11           thriving community of tenants who live in that ford - - -  
12           affordable housing.

13                   MS. CRUZ: Yes, Your Honor.

14                   JUDGE RIVERA: They're not mutually exclusive.

15                   MS. CRUZ: They're not mutually exclusive. But  
16           it - - - you can't - - -

17                   JUDGE RIVERA: You don't need only the wealthy  
18           downtown.

19                   MS. CRUZ: That's correct. But that is not what,  
20           in fact, occurred, because as I said, 140 apartments in my  
21           client's building was be - - - fell below the threshold,  
22           less than 2,000 a month. And that - - - those apartments  
23           remained subject to rent stabilization, but those that met  
24           the criteria of luxury deregulation, which is part of rent  
25           stabilization were entitled to enjoy those benefits.



1 Thank you for your indulgence, Your Honor.

2 CHIEF JUDGE DIFIORE: Thank you, counsel.

3 Counsel? Counsel, what do you make of this  
4 silence on the part of the Assembly?

5 MR. SMITH: I've never heard that there's any  
6 significance to silence by the house that has already  
7 passed the bill. It is not the burden on the Assembly,  
8 having passed the bill in perfectly plain language, and  
9 with perfectly plain legislative history consistent with  
10 the language, the Assembly is supposed to monitor the  
11 Senate debate, find out what Mayor Giuliani wrote to  
12 Senator Bruno, and to lodge some sort of protest, fill up  
13 the bill jacket, as Mr. McGuire said, with protests against  
14 this out - - - that's not the way it works.

15 JUDGE FEINMAN: What is - - - what about what is  
16 there, which is Senator Leichter's letter?

17 MR. SMITH: Yes, Senator - - - Senator Leichter -  
18 - - Senator Leichter was had, I must say, Your Honor.  
19 Senator Leichter believed that the legislative history  
20 magically works to overcome the text. I think he was  
21 wrong. I think this court could do a useful service, among  
22 other things, by reminding legislators, who sometimes may  
23 be prone to believe this even when they're opposed to the  
24 particular bill in question, you can't write law, just by  
25 writing legislative history. You got to write law. I



1 think Senator Leichter, along with Senator Bruno and  
2 Senator Leibell, and perhaps some others, forgot that.

3 I do - - - Mr. McGuire did try to answer, I think  
4 when Judge Stein asked the question, what - - - how would  
5 this be different without the notwithstanding clause, but I  
6 don't think his answer works. Let me read it for a minute  
7 without the notwithstanding clause.

8 "The rents of each dwelling unit, in an eligible  
9 multiple dwelling, shall be fully subject to the control  
10 under such local law" meaning any local law for the  
11 stabilization of rents. He says that means it's not  
12 subject to stabilization without the notwithstanding  
13 clause? I don't think so. And - - - and the  
14 notwithstanding clause does not - - - if there's a problem  
15 there, the notwithstanding clause is not the way you would  
16 pick to remedy it.

17 The - - - both Mr. McGuire and Ms. Cruz talk  
18 about the purpose of 421-g, which is indeed to per - - - to  
19 produce this wonderful revitalization and twenty-four-hour  
20 community. But the purpose of subdivision 6 - - - the  
21 purpose of 421-g(6) is one purpose and one purpose only, to  
22 make this - - - to make the building subject to rent  
23 stabilization.

24 And finally, Mr. McGuire makes a - - - the, "come  
25 on, you don't want any rent control for the rich" argument.



1           What those arguments always forget is that if the rent - -  
2           - if the - - - if the law had been followed, if the rents  
3           were where they should be, the people in those buildings  
4           would be considerably less wealthy. You'd have more  
5           middle-class people in the buildings, because the rents  
6           would be lower, and that's the whole point.

7                       Yes, rent control does some - - - sometimes  
8           benefit the rich. In - - - in Thornton v. Baron, it  
9           benefited Cyndi Lauper, but that - - - but that wasn't  
10          because the court imputed to the legislature a love for the  
11          Cyndi Laupers in the world. It was because they - - - the  
12          rent control laws cannot be enforced without doing that,  
13          and that's how you get a rent control regime, that permits  
14          less affluent people to live in these buildings. At least,  
15          that is the policy behind the law. Thank you.

16                       CHIEF JUDGE DIFIORE: Thank you, counsel.

17                       JUDGE FAHEY: Well, I - - - I like Cyndi Lauper.  
18          I just want to - - -

19                       MR. SMITH: I - - - I did not mean anything  
20          personal about Cyndi Lauper.

21                       CHIEF JUDGE DIFIORE: Thank you.

22                       MR. MCGUIRE: We all - - - we all just want to  
23          have fun, Your Honor. Thank you, Your Honors.

24                       (Court is adjourned)

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

I, Karen Schiffmiller, certify that the foregoing transcript of proceedings in the Court of Appeals of Kuzmich, et al. v. 50 Murray Street Acquisition LLC, No. 50, and West et al. v. B.C.R.E. - 90 West Street, LLC, No. 51 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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