

**Riverside Syndicate, Inc. v Munroe**

2006 NY Slip Op 30321(U)

February 10, 2006

Supreme Court, New York County

Docket Number: 0109491/2004

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. JUDITH J. GISCHE

PRESENT: \_\_\_\_\_

PART 10

Index Number : 109491/2004

*Justice*

RIVERSIDE SYNDICATE INC

INDEX NO. \_\_\_\_\_

vs

MUNROE, VICTORIA

MOTION DATE 11/22/05

Sequence Number : 001

MOTION SEQ. NO. \_\_\_\_\_

SUMMARY JUDGMENT

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ s motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

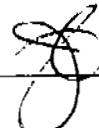
Upon the foregoing papers, It is ordered that this ~~motion~~

motion (s) and cross-motion(s) decided in accordance with the annexed decision/order of even date.

**FILED**  
FEB 17 2006  
NEW YORK  
COUNTY CLERK'S OFFICE

FEB 10 2006

Dated: \_\_\_\_\_



J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 10

-----X

RIVERSIDE SYNDICATE, INC.,  
  
Plaintiff,

-against-

VICTORIA MUNROE and ERIC F. SALTZMAN  
a/k/a ERIC SALTZMAN,

Defendants.

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**DECISION/ORDER**

Index No.: 109491/04  
Seq. No.: 001

Present:  
Hon. Judith J. Gische  
J.S.C.

**FILED**  
FEB 17 2006  
NEW YORK  
COUNTY CLERK'S OFFICE

Recitation, as required by CPLR 2219 [a], of the papers considered in (these) motion(s) of this

<b>Papers</b>	<b>Numbered</b>
Plt's motion [sj] w/affirm in support (HWK), MR affid in support, exhs .....	1
Def's x-motion w/affid in support (ES), exhs .....	2
Plt's affirm in further support (HWK) w/exhs .....	3

-----X

*Upon the foregoing papers, the decision and order of the court is as follows:*

The parties before the court are respectively the landlord and tenants of apartments 10A, 10B and 10F in the building located at 155 Riverside Drive in Manhattan. In 1996 the parties were before the housing part of the Civil Court of the City of New York, wherein the landlord was seeking to evict the tenants. That Housing Court proceeding was settled pursuant to a "So Ordered" consent agreement. Eight years later, landlord commenced this proceeding seeking to have the consent agreement set aside as void against public policy.

Issue has been joined. The landlord has moved and the tenants have cross-moved for summary judgment. CPLR § 3212. The relevant facts are not in dispute.

In 1996 the parties entered into a consent decree that was "So Ordered" by the court. The consent decree emanated out of a 1995 holdover proceeding brought by the landlord seeking to evict tenants from apartment 10A on the basis that they were subtenants that held over after the term of the sublease agreement expired.

The tenants hotly contested the holdover proceeding, claiming that they were the real tenants in interest. Summary judgment motions were pending before the court when the parties, each represented by counsel, entered into the consent decree. Significantly the consent decree recognized the tenants as the protected rent stabilized tenants of apartment 10A, it established a stabilized rent, and it afforded the tenants additional protection against eviction, if they decided not to use the apartment as their primary residence. Insofar as pertinent to this action, the consent decree provided:

" In consideration of petitioner's [landlord's] forbearance suit it is agreed that respondents [tenants] shall be recognized as the lawful, rent stabilized tenants of the subject premises [apartment 10A] at a monthly rental of \$2,000 commencing May 1, 1996 for a period of two years."

" In consideration of petitioner's covenants herein, it is further agreed and understood that respondent's waive all right to challenge the legality of this rent and accept the rent and the lease as \$2,000 as the legal rent."

" Regardless of respondents' primary residence respondents' may remain as the rent stabilized tenants of apartments 10A, b and F."

"Respondents agree not to file a DHCR overcharge claim based on \$2,000 rental. Pursuant to the Rent Stabilization Code, this waiver shall be effective as a court stipulation by two sides represented by counsel and so ordered by a judge of competent jurisdiction. . ."

" The respondents may, at respondent's own cost and expense connect apartments 10A and B, and the bedroom on 10B may be enlarged by adding it to the adjacent living room from 10A..."

"Respondent shall also have permission to make alterations and improvements to apartment 10A, B and F on notice to petitioner, and may renovate and remodel kitchen/dining room area, all at respondent's own cost and expense."

In the years following the consent decree, the landlord collected the rent charged at the agreed to level. Tenants abided by the agreement and did not challenge the rent agreed to. The statute of limitation for challenging the rent passed. Tenants exercised their right to join and make improvements to the apartments, spending approximately \$150,000 in so doing. Landlord deregulated apartment 10A in October 2001 relying on the rent stabilized rent established in the consent decree, with allowable increases.

Landlord does not claim that it was the victim of any fraud, overreaching or that there was any mistake made when the consent agreement was signed. Landlord was represented by counsel in connection with that agreement. Landlord simply argues that the agreement, which contains waivers of the rent stabilization laws, is void as against public policy. He relies upon the recent Court of Appeals case in Thorton v. Baron, 5 NY3d 175 (2005) to support his position.

In Thorton, the Court of Appeals held that a lease provision purporting to exempt an apartment from rent regulation in exchange for an agreement not to use the apartment as a primary residence is void as against public policy. The court's ruling was made in connection with a scheme between a landlord and an illusory tenant to agree that an apartment would not be used as the named tenant's primary residence.

The effect of such agreement was to remove the apartment from rent regulation. Bogus declaratory judgment actions were brought and the landlord and tenant entered into quickie settlements in which the named leased tenants confirmed that they did not occupy the apartments as their primary residences. The tenants actually did not occupy the apartments at all. The apartment would then be sublet to someone who would actually occupy the apartment as a primary residence for a rent in excess of what would have been allowable under rent regulation. The Court of Appeals refused to enforce the collusive agreement between the landlord and the illusory prime tenant against the subtenant.

At bar landlord claims that the agreement it made with these tenants in 1996 was also contrary to the rent stabilization laws and should be void as against public policy. He claims that the consent decree violates the rent stabilization laws in two ways. First he claims that he raised the rent to an illegal amount and the tenants waived their right to challenge it. Second he claims that in contravention of the rent stabilization laws he waived his right to evict tenants on the ground of non-primary residence.

Landlords claims are rejected for the following reasons.

Thorton, supra, is inapposite to the case at bar. In Thorton the Court of Appeals refused to enforce an agreement between a landlord and tenant that removed an apartment from the system of rent regulation against an innocent third party, a purported sublessor. At bar the agreement provides that the apartment is subject to rent stabilization. It is not removing the apartment from rent stabilization. Moreover, the landlord is a party to the agreement.

In Thorton, the court proceeding that led to the consent decrees were not truly contested hearings. This stands in distinction to the 1995 holdover proceeding that led to the 1996 consent decree at bar. The parties each had bona fide disputes that were hotly contested and settled and compromised in an agreement negotiated at arms length. Indeed, if landlords argument in this case were carried to its logical conclusion, no housing court case involving rent regulated apartments could ever be settled, because the court would always have to determine the parties relative rights under the rent laws. This is not and has never been the law which upholds agreements that reflect compromises of conflicting claims. *For example: Merwest Realty v. Praeger*, 264 AD2d 313 (1<sup>st</sup> dept. 1999); Mitchell v. N.Y. Hospital, 61 NY2d 208 (1984).

The tenants at bar did not as part of the consent decree, agree that they were not using the apartment as their primary residence, when in fact they were. In this regard while the rent stabilization laws prohibit waivers by the tenant's of the benefits of rent regulation (see: 9 NYCRR § 2200.15) a landlord's forbearance of rights under the rent stabilization laws is not prohibited. Landlords are not compelled under the rent stabilization laws to bring non-primary residence holdover proceedings against tenants. Thus, there is nothing about the landlord's waiver of his right to bring a non-primary residence holdover proceeding against tenants that is contrary to the rent stabilization laws.

Finally, principles of equity and estoppel strongly militate against the landlord setting aside the consent decree ten years after it was made. Landlord has reaped ten years worth of benefits under the agreement, including that of the rents it now admits

were illegal and inflated. It makes no offer to disgorge those benefits by returning rents with appropriate penalties for illegal overcharge. It makes no representation that the apartments will be returned to rent stabilization. Indeed in the last ten years, landlord has successfully sought to deregulate apartment 10A, relying upon the rent it set in the consent decree (as later increased). Here tenants relied upon the agreement and to unravel it now would injure them because they could not be put back into the position they were in at the time the agreement was made. See: Rogers v. Town of Islip, 230 AD2d 727 (2<sup>nd</sup> dept. 1996). They are legally foreclosed by the applicable statute of limitation from pursuing a claim of rent overcharge which presumably predated 1995. They have joined and improved the apartments, which included the expenditure of considerable sums. In fact, the three apartments are no longer recognizable as such, but are now one apartment. There is simply no way to set aside the consent decree at this time and return the parties to their pre-agreement stance.<sup>1</sup>

### **Conclusion**

In accordance with this decision it is hereby:

**ORDERED** that plaintiff's motion for summary judgment is denied in its entirety, and it is further

**ORDERED** that defendants' cross-motion for summary judgment dismissing the

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<sup>1</sup>The court notes that although not raised by the parties in this motion, this action would appear to otherwise be barred by the applicable statute of limitations regarding rescission of contracts and declaratory judgments. CPLR § 213, Dean v. VanScoter, 98 AD2d 983 (4<sup>th</sup> dept. 1983) *app. disp.* 62 NY2d 645 (1984); Goldberg v. Manufacturers Life Ins. Co., 242 AD2d 175 (1<sup>st</sup> dept. 1998) *lv to app. disp.* and den 92 NY2d 1000 (1998).

complaint is granted, and it is further

**ORDERED** that the clerk is directed to enter a judgment dismissing the complaint in favor of defendants with costs, and it is further

**ORDERED** that any relief not expressly granted herein is denied.

This shall constitute the decision and order of the Court.

Dated: New York, New York  
February 10, 2006

So Ordered:

  
\_\_\_\_\_  
HON. JUDITH S. GISCHE, J.S.C.

**FILED**  
FEB 17 2006  
NEW YORK  
COUNTY CLERK'S OFFICE