WARSHAW BURSTEIN

575 Lexington Avenue, New York, NY 10022 | (212) 984-7700 | www.wbny.com | @warshawburstein | Warshaw

A Big Decision for Rent Regulation during Strange Times

On April 2, 2020, New York's Court of Appeals, by a 4-3 decision in Matter of Regina Metro. Co. LLC v. DHCR, foreclosed further retroactive application of certain provisions of the Housing Stability and Tenant Protection Act of 2019 ("HSPTA")—the recent overhaul and perpetual extension of New York's rent-regulatory laws. Coming in the midst of the COVID-19 crisis, this important ruling would seem to strengthen the pending constitutionality challenges to HSTPA in general. With portions of HSTPA having now failed a constitutional due process analysis, HSTPA's announced purpose of shifting the cost of providing affordable housing onto private owners may well not withstand the similar regulatory takings analysis.

Some relevant background: HSTPA extended New York's rent-regulatory laws in perpetuity, rather than incrementally, as had been the case for decades. HSTPA also eliminated provisions that had permitted deregulation of covered units under certain circumstances, while at the same time dramatically restricting the ability to increase rents. Not only that, but HSPTA made significant changes to rent-overcharge claims and procedures, extending the statute of limitations from four to six years and possible liability for treble damages from two to six years, while providing that such changes would apply to pending claims. Under HSTPA, tribunals adjudicating overcharge claims must now consider all available rent history to investigate overcharge claims and determine legal regulated rents, rather than, absent fraud, being limited to rent-history information from no more than four years before the complaint's filing.

Now, with Regina Metro, the Court of Appeals has held that HSTPA's rent overcharge provisions can only be applied prospectively, notwithstanding express statutory language to the contrary. Among many reasons, such retroactive application was deemed impermissible because of the substantive effect on property owners that included impairment of past rights, increased liability for past acts, and imposition of new duties for transactions long since concluded.[1] Critically, the Court of Appeals also found that the called-for retroactive application of the relevant HSTPA provisions does not satisfy constitutional due process requirements. This is so because the Legislature failed to provide any support or rational basis for significantly expanding the scope of owner liability, based on conduct that was wholly permissible before the enactment of HSTPA.[2]

[1] See Regina Metro. Co. LLC v. DHCR, 2020 NY Slip. Op. 02127, at *17 (2020).

[2] See Regina Metro., supra, at *14.

This holding not only is a rare judicial restriction of a remedial statute, as the dissent notes, but also could have guiding effect on the multiple pending actions challenging the constitutionality of HSTPA.[3] Those actions all call into question HSTPA as an uncompensated regulatory taking, for, among other reasons, forcing property owners to bear the cost of providing affordable housing. See HSTPA, Part D, § 1 ("[t]he legislature further recognizes that severe disruption of the rental housing market has occurred and threatens to be exacerbated as a result of the present state of the law in relation to the deregulation of housing accommodations upon vacancy. The situation has permitted speculative and profiteering practices and has brought about the loss of vital and irreplaceable affordable housing for working persons and families . . ."). For such a regulatory cost transference to be considered constitutional, among other requirements, the enabling legislation would have had to explain and justify a legitimate purpose for the regulation.[4] So, with Regina Metro having found that HSTPA's retroactive rent overcharge provisions lack the rational basis necessary to withstand due process analysis, other provisions—namely, those based upon shifting of the cost of affordable housing to private owners—ought not have the rational basis required under a takings analysis. At the least, the holding may well help the actions survive pending or impending dismissal motions. But that may not hold either, if the Legislature attempts to correct the infirmities in HSTPA perceived by Regina Metro.

If you have any questions concerning the impact this decision has on your rights as a landlord or tenant, please contact Maxwell Breed at (212) 984-7747 or mbreed@wbny.com or your regular Warshaw Burstein attorney.

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[3] See Community Hous. Improvement Program, et al. v. City of N.Y., et al., Case No. 1:19-cv-04087 (July 15, 2019); 74 Pinehurst LLC, et al. v. State of N.Y., et al., Case No. 1:19-cv-06447 (Nov. 14, 2019); G-Max Mgmt., Inc., et al. v. State of N.Y., et al., Case No. 7:20-cv-00634-KMK (Jan. 23, 2020).

[4] See Regina Metro., supra at *17; see e.g. Penn. Cent. Transp. Co. v. New York, 42 N.Y.2d 324, 397 N.Y.S.2d 914 (1977); Yee v. City of Escondido, California, 503 U.S. 519, 112 S.Ct. 1522 (1992); Pennell v. City of San Jose, 485 U.S. 1, 108 S.Ct. 849 (1988); Murr v. Wisconsin, 137 S. Ct. 1933, 1943 (June 23, 2017); Armstrong v. United States, 364 U.S. 40, 49, 80 S.Ct. 1563 (1960) (regulatory taking requires valid purpose).