

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST DEPARTMENT

X

AMY L. ROBERTS, et al,

Plaintiffs- Appellants

:

New York County Clerk's  
Index No. 100956/07

- against -

TISHMAN SPEYER PROPERTIES, L.P., et al

Defendants- Respondents

:

X

**WHEREAS**, by Notice of Motions dated March 12, 2009 Defendants- Respondents ("Defendants"), by their respective counsel, brought on motions before this Court seeking, *inter alia*, a stay of the underlying proceedings and a stay of the effectiveness of the Court's March 5, 2009 decision in this matter (the "Decision"); and

**WHEREAS**, Plaintiffs-Appellants ("Plaintiffs"), by their counsel, opposed said relief; and

**NOW**, therefore, upon and subject to the foregoing terms and conditions described below, the Court "so orders" the following:

1. The "briefing schedule" on the motion for leave to appeal shall be as follows:

(a) Plaintiffs' answering papers to the motions for leave to appeal shall be served, by hand, on or before 2:00 PM on March 19, 2009;

(b) Defendants' reply papers, if any, shall be served, by hand, on or before 5:00 PM on March 20, 2009; and

(c) The motions shall be returnable before this Court on March 23, 2009.

2. The effectiveness and implementation of this Decision is immediately stayed in all respects as to this action, *Roberts, et al v. Tishman Speyer Properties, LP, et al* (NY County Index No. Index No. 100956/07) pending the Court's hearing and determination of Defendants' motions for leave to appeal and, if this Court grants leave to appeal to the Court of Appeals, said stay shall continue in full force and effect pending hearing and determination of said appeal by the Court of Appeals and all proceedings in *Roberts, et al v. Tishman Speyer Properties, LP, et al* (NY County Index No. Index No. 100956/07) shall be so stayed except as otherwise agreed upon by the mutual consent of the parties or by order of the Court for good cause shown.

3. During the pendency of the stay, the parties shall be governed by the following terms and conditions ordered by this Court:

(a) as to all market rate tenants that are, or in the future will be, in occupancy of apartments at Stuyvesant Town and/or Peter Cooper Village (ST/PCV), PCV ST Owner LP and ST Owner, LP, as owners of the two housing complexes (collectively "Owner") shall, in good faith, calculate the rent that it could have lawfully charged said tenants had the respective apartments remained subject to the Rent Stabilization Law (the "Stabilized Rent"); Owner shall provide a chart of the rent differential and the records of its calculations to Plaintiffs' counsel no later than March 26, 2009;

(b) Owner shall prospectively (commencing with April 2009 rent), within five (5) business days of collection, deposit the differential (the "Rent Differential") between the Stabilized Rent and the rent provided under the terms of the lease (the "Market Rent") into an interest bearing escrow account (described in paragraph 5 below), at then prevailing bank interest rate, provided however that Plaintiffs do not waive their right ultimately to seek to recover interest at the statutory rate if they obtain a judgment in this action; As a material inducement for Owner's compliance with the rent tender, deposit and escrow procedure set forth in this order, Owner has relied upon the Decision having been stayed in the manner described above

such that its receipt, retaining and/or deposit and/or escrow of said monies as being in full and complete compliance with the order of this Court.

(c) at all times, any and all funds constituting the Rent Differential to be collected and placed into the escrow account shall remain property of the Tenants who paid those funds, and not the property or contingent property of Owner, until such time, if any, those funds are distributed to the rightful party as determined by a court of competent jurisdiction in accordance with paragraph 5 below;

(d) the foregoing conditions shall not obligate Owner, while the stay is in effect, to make retroactive refund or grant rent credit to any ST/PCV market tenant putatively affected by the Decision;

(e) during the pendency of this stay, any pending summary proceedings or actions against market rate tenants of ST/PCV that are predicated solely upon the market rate nature of said tenancy, shall be held in abeyance and no new such proceedings shall be commenced; Owner shall not be barred by this Stipulation from commencing or continuing proceedings or actions against rent stabilized tenants whom Owner believes, in good faith, have violated their leases, their tenancies and/or have failed to comply with their obligations under law, including, but not limited to, occupying their apartments as primary residents; and Owner shall not be barred from commencing or continuing proceedings or actions against market rate tenants whom Owner believes, in good faith, have violated their leases, their tenancies and/or have failed to comply with their obligations under law. Owner shall notify Alexander Schmidt, Esq. via e-mail (*Schmidt@whafh.com*) within five (5) business days after a petition or complaint is served upon any market rate tenant of ST/PCV where the commencement of the underlying proceeding or action is predicated solely upon the non-payment of the Rent Differential.

(f) as a material consideration for Plaintiffs consent to the entry of this order, Owner warrants, represents and agrees that it has maintained, and will continue to maintain indefinitely, the documents sufficient, under Rent Stabilization Code § 2526.1 (f) (2) (i), to render any subsequent purchaser of any portion of ST/PCV liable for any rent overcharges for which Owner may be held liable.

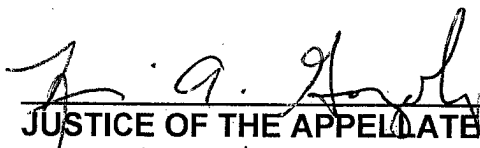
(g) the parties have not made any admissions or concessions, nor have they waived or prejudiced any rights or remedies at law or equity.

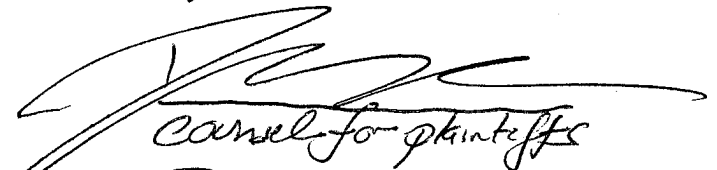
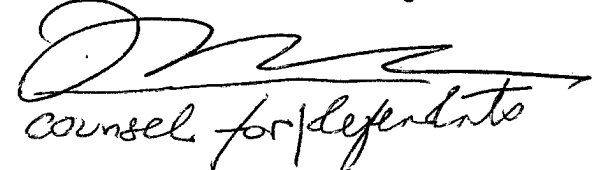
4. In the event plaintiffs contend that any of the foregoing conditions of the stay are breached by Owner, Plaintiffs' counsel shall by e-mail notify Owner's counsel as to such breach, affording Owner five (5) business days to cure said breach; in the event the breach is not cured within said five day period then the stay shall be lifted as to the affected tenant(s).

5. The escrow account will be established as a mutually agreeable financial institution, pursuant to an escrow agreement to be drafted by counsel for the parties and the escrow agent, as to which escrow agreement counsel for the Plaintiffs shall be a co-signatory. Owner shall maintain records sufficient to identify all funds deposited by each effected Tenant into the escrow account, which records Plaintiffs' counsel shall be permitted to review upon reasonable notice and at reasonable times. Upon conclusion of the action, or after the New York Court of Appeals rules on the legal issue presented by Defendants' present motion for leave to appeal, if that occurs earlier, or at any other time that may be directed by a court with jurisdiction over this action, the escrowed funds shall be distributed to Plaintiffs (if they prevail) or to Owner (if it prevails), in accordance with a distribution order to be negotiated by the parties and issued by the court.

6. Nothing in this order affects Plaintiffs right to oppose Defendants' present motion for leave to appeal.

SO-ORDERED:

  
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JUSTICE OF THE APPELLATE DIVISION  
LAG  
Date 3/13/09

*Agree to*  
  
\_\_\_\_\_  
*counsel for plaintiffs*  
  
\_\_\_\_\_  
*counsel for defendants*  
3/13/09 PW ST