NEW YORK COURT OF APPEALS ROUNDUP

CLASS ACTION CLAIMS PREMATURELY DISMISSED: 'MADDICKS'

WILLIAM T. RUSSELL, JR. AND LYNN K. NEUNER*
SIMPSON THACHER & BARTLETT LLP

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The Court of Appeals recently addressed the issue of whether it is appropriate to dismiss class action claims at the motion to dismiss stage in *Maddicks v. Big City Properties*, a landlord-tenant action. In a 4-3 decision, the majority affirmed the Appellate Division, First Department ruling that the trial court erroneously dismissed the entire complaint on the grounds that it could not be maintained on a class basis. The majority, in a decision authored by Judge Eugene M. Fahey and joined by Judges Jenny Rivera, Leslie Stein and Rowan Wilson, ruled it was premature to terminate the case at such an early stage because the tenant-plaintiffs had adequately alleged an orchestrated scheme by the building-owner-defendants to charge illegally high rents. The dissent, in a decision authored by Judge Michael Garcia and joined by Chief Judge Janet DiFiore and Judge Paul Feinman, disagreed, concluding that the tenants have unique individual circumstances and did not allege a single common question of law or fact. In essence, the majority and the dissent agree that it is permissible for a defendant to move to dismiss class claims at the pleading stage pursuant to CPLR 3211, but they disagree with respect to their analysis of the allegations in the complaint. The dissent warns that the majority's more permissive approach toward class pleading will mean that defendants in New York courts will have to undergo expensive class certification discovery before being able to terminate claims that are ill-suited for class treatment.

The case concerns a complaint by 28 tenants from the Harlem neighborhood against their building owners and the owners' corporate affiliates. The defendants are organized under the common ownership of Big City Acquisitions and operate the buildings through Big City Realty Management. The tenants sought to proceed as a class of current and former tenants of buildings in the Big City portfolio who resided in rent-stabilized or unlawfully-deregulated apartments from Dec. 6, 2012 through the filing of the complaint and who paid rent in excess of the legal limit based on defendants' alleged misrepresentations. Plaintiffs allege that defendants engaged in a "clear pattern and practice of improper and illegal conduct" aimed at charging inflated rents above the legal limit.

Plaintiffs alleged that Big City conducted this unlawful scheme using four different strategies: (1) falsely reporting to the New York City government that certain of its leases were rent-controlled pursuant to "the J-51 program" when they were not; (2) inflating the cost of individual apartment improvements in order to be able to charge higher rents; (3) failing to register rental information as required by law in order to prevent tenants from calculating the correct legal rent; and (4) inflating the rent on apartments that exit rent-controlled status by recording a much higher rent than what was actually charged. Plaintiffs asserted claims for violation of the Rent Stabilization Law and General Business Law §349.

* **William T. Russell, Jr.** *and* **Lynn K. Neuner** *are partners at Simpson Thacher & Bartlett LLP.*

The trial court dismissed the entire complaint, reasoning that there was no basis for class relief because plaintiffs relied on four different theories to establish defendants' rent inflation and each theory required a fact-specific analysis that precluded aggregate adjudication. The Appellate Division, First Department, in a 3-2 decision, upheld the dismissal of the General Business Law §349 claim, but otherwise reversed. The majority ruled that plaintiffs had adequately alleged a systematic effort by Big City to avoid compliance with the rent stabilization laws and that it was premature to dismiss these class claims before an answer was filed and any discovery occurred.

Judge Fahey's majority opinion acknowledges that defendants may move to dismiss a class action allegation in a pre-answer motion pursuant to CPLR 3211(a) and that class plaintiffs must adequately plead the class requirements set forth in CPLR 901: numerosity, commonality, typicality, adequacy of representation, and superiority. The majority recognizes that class members may have been harmed in different ways (through different inflation schemes) and may have suffered different damages but concludes that the plaintiffs sufficiently pled commonality by asserting that defendants used a "common systematic plan" to charge illegally high rents. The majority analogized the alleged misconduct to the harm in *City of New York v. Maul*, 14 N.Y.3d 499 (2010), in which the court affirmed an order granting class certification despite the fact that individual class members had unique factual circumstances.

The majority concluded that its approach of permitting the case to proceed to class certification discovery and motion practice pursuant to Article 9 of the CPLR would be "the moderate one" under the circumstances. Under CPLR 902, a plaintiff must move for certification within 60 days of responsive pleadings being filed. Under CPLR 906, the court can isolate specific issues for class treatment or permit the certification of sub-classes. The majority concluded that it would be premature to dispose of the tenants' claims, even if they had varied harms and damages, because sub-classes could address these issues and still provide a more efficient form of litigation.

Writing for the dissent, Judge Garcia determined that the entire case should have been dismissed because plaintiffs failed to identify any common question of fact or law. The dissent observed that "the bare allegation that the defendants overcharged rent to the plaintiffs, without a common theory of how they did so, is legally insufficient to find that common issues predominate." With respect to the four alleged schemes, the dissent found that they were not common across the class—some members were allegedly harmed by each scheme, while others were not.

The dissent essentially states that because there is not a common question of causation or fact-based liability for all class members, and because the class members suffered disparate damages, the case is not susceptible to class treatment. As an example, the dissent identifies the issue of whether apartments had individual improvements that sufficiently justify an increase in rent and notes that the evaluation would be highly specific to each apartment and not susceptible to class-wide adjudication. The dissent acknowledges that "the J-51 claims" regarding false certification of rent-control apartments may be amenable to class resolution, but observes that this impacts only four of the 11 buildings at issue so commonality as to those claims still would not predominate.

Ultimately, the dissent expressed concern that the majority decision will send a signal to trial courts that they should be reluctant to dismiss class allegations at the pleading stage and instead allow class-related discovery to proceed so that certification can be addressed under Article 9. The dissent observes that class certification discovery can be expensive and time-consuming and worries that the majority ruling will "diminish the power of the court to prevent abuse of the class action process."

The *Maddicks* split shows an underlying division in mindset toward the class action device. The majority counsels for a review at the pleadings stage that is probing but patient, while the dissent would be more open to threshold dismissal when "it is readily apparent from the face of a pleading and any supporting affidavits that the claims are not appropriate for class relief." In the federal realm, defendants may move to strike class allegations under Rule 12, but the practice is rare—class treatment is more typically decided at the class certification stage under Rule 23. Given the 60-day timing set forth in Article 9, defendants in New York state courts may still be able to achieve a relatively prompt adjudication of class allegations if an initial motion to dismiss is either not a good fit for the circumstances of the case or denied by the trial court.
