



Legal Alert: Queens Supreme Court weighs in on issue of fraud post-Regina and Lambastes Tenants' Attorneys

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Queens Supreme Court Justice Sally E. Unger recently ruled that a property owner who is being sued in a class action for rent overcharge in a building receiving J-51 tax benefits does not have to post an undertaking, i.e., a deposit of a significant portion of the total money damages that tenants allege they might be awarded if they ultimately prevail. In rejecting the tenants motion seeking an undertaking, Justice Unger was surprisingly harsh on tenants' counsel, who had accused the owner of "willful ignorance fraud" for being uncertain how and when to re-register apartments that were regulated due to the owner's receipt of J-51 benefits.

Justice Unger's decision states the following in part: "It seems to this Court that a litigant's ignorance of the current status of a law that has been in flux for years [*i.e., J-51 vis-à-vis the RSL*] is far more excusable than an attorney who misrepresents statutes that are not only straightforward in their meaning, but have been in existence for approximately 40 years [*i.e., the law with regard to undertakings*]."

Randi B. Gilbert, Esq. and Richard Walsh, Esq. of this firm represented the owner on the motion. In addition to being successful on this motion, it is our belief the owner will ultimately prevail in defending against the Tenants' complaint.