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 1      COURT OF APPEALS

 2      STATE OF NEW YORK

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         KATHRYN CASEY,
 4
                        Respondent,
 5
                 -against-
 6                                              NO. 10
         WHITEHOUSE ESTATES, INC.,
 7
                        Appellants.
 8      -------------------------------------------
                                            20 Eagle Street
 9                                          Albany, New York
                                            February 7, 2023
10      Before:

11              ACTING CHIEF JUDGE ANTHONY CANNATARO
                    ASSOCIATE JUDGE JENNY RIVERA
12              ASSOCIATE JUDGE MICHAEL J. GARCIA
                  ASSOCIATE JUDGE ROWAN D. WILSON
13              ASSOCIATE JUDGE MADELINE SINGAS
                ASSOCIATE JUDGE SHIRLEY TROUTMAN
14

15      Appearances:

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24                                          Cynthia R. Piett
                                       Official Court Transcriber
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1   ACTING CHIEF JUDGE CANNATARO: Good afternoon.

2   Our first appeal on today's calendar is number 10, Casey v.

3   Whitehouse Estates.

4   Counsel, whenever you're ready.

5   MR. TURKEL: Thank you, Your Honor. May it

6   please the court. Jeffrey Turkel for the appellants. I

7   would like to reserve two minutes for rebuttal, please.

8   ACTING CHIEF JUDGE CANNATARO: You have two

9   minutes.

10   MR. TURKEL: Thank you.

11   Supreme Court's order in this case was issued in

12   2017. And a lot has happened since then. Most notably,

13   this court's decision in Regina and the First Department's

14   post-Regina decisions in this case and in several other

15   cases. What I'd like to do with my time here, today, is to

16   discuss the fraud issue the way this court, in Regina,

17   described the sole fraud-based exception to the four-year

18   rule, and how the First Department, in this and other

19   cases, has dramatically expanded that, and I think,

20   unfortunately, has disregarded what Regina has to say.

21   The fraud-based exception began in 2005 in

22   Thornton and in 2010 in the Grimm case. This court

23   expanded and clarified on the circumstances where fraud

24   would vitiate the four-year rule and allow the default run

25   formula to go forward. And the court specifically said

1   that the four-year rule could only be breached where there

2   is evidence of a landlord's fraudulent deregulation scheme

3   to remove an apartment from the protections of rent

4   stabilization.

5   As in Thornton, the rental history may be

6   examined for the limited purpose of determining whether a

7   fraudulent scheme to destabilize the apartment tainted the

8   reliability of the base date.

9   ACTING CHIEF JUDGE CANNATARO: So are you saying

10   that unless it can be sufficiently demonstrated that the

11   fraud is a scheme to deregulate an apartment, which I

12   assume you're now going to say, we concede that the

13   apartment's regulated?

14   MR. TURKEL: Yes.

15   ACTING CHIEF JUDGE CANNATARO: Any other kind of

16   fraud would be acceptable?

17   MR. TURKEL: Well, not acceptable. It's

18   certainly - - - all I can tell you is what this court said

19   in Regina. This court said, fraudulent scheme to

20   destabilize. It said that five times. Five times, that

21   phrase or variance thereof. So I have to assume that the

22   court was serious, that this was the sole fraud-based

23   exception.

24   JUDGE RIVERA: Does the destabilization have to

25   flow immediately from that particular fraud? Can it be a

1   long-term scheme that, down the road, eventually, you might

2   end up removing these apartments from - - -

3   MR. TURKEL: I - - - I - - -

4   JUDGE RIVERA: - - - coverage?

5   MR. TURKEL: I mean, I think, the court as the -

6   - - as the court, determining what the common law

7   exceptions are to the statute, because the pre-HSTPA

8   statute doesn't really govern any of this or doesn't speak

9   to it. I suppose the court could go that way, if it

10   wished.

11   JUDGE RIVERA: It seems in Thornton, I think - -

12   - Judge Kaye, there in Thornton, is talking about,

13   potentially, down the road - - -

14   MR. TURKEL: Yes.

15   JUDGE RIVERA: - - - there may be even more

16   grevious implications for the fraud - - -

17   MR. TURKEL: Yes.

18   JUDGE RIVERA: - - - beyond the immediate.

19   MR. TURKEL: Yes. I - - - I understand that.

20   What I would say is that if the tenant who came - - - and

21   is a stabilized tenant, post this fraud - - -

22   JUDGE RIVERA: Uh-huh.

23   MR. TURKEL: - - - didn't vacate the apartment

24   for thirty years, there's no deregulation for thirty years,

25   at least based on a vacancy. So if the court wanted to go

1   that would taint or make the base date unreliable.

2   JUDGE GARCIA: Isn't that, Counsel, really the

3   point of Regina and those cases? It may be public policy,

4   it may be fraud. But it seems to me what you're trying to

5   get at is reliability. So how reliable is the information

6   we have about the rent on the base date?

7   MR. TURKEL: Yes.

8   JUDGE GARCIA: There are other penalties for

9   various misbehavior - - -

10   MR. TURKEL: Absolutely - - -

11   JUDGE GARCIA: - - - right?

12   MR. TURKEL: - - - Your Honor.

13   JUDGE GARCIA: So it seems there's two ways you

14   can do that here. One is fraud. Fraud somehow made the

15   base - - - the rent that was actually being paid on the

16   base date unreliable, or we just don't have enough

17   information provided to be able to determine that, right?

18   MR. TURKEL: I understand both points of view. I

19   think, you know, the - - - when - - - when you - - - if you

20   look back at Regina, the first thing that the Regina court

21   says is, let's start with the statute because the statute

22   is what the legislature has promulgated, and we're supposed

23   to be implementing the intention of the legislature. And

24   it started out by saying, we're looking at the pre-HSTPA

25   statute.

1   And what we see is there is a four-year rule.

2   That you look at the base date four years prior to the

3   complaint being filed. That is the base date. Okay. And

4   the court created the exception, the common law exception,

5   to the four-year rule because it's unfair to use the base

6   date as the be all and end all for all future - - -

7   JUDGE GARCIA: But again, that rule that was

8   crafted there was done so that you can get the - - - you

9   can get to a conclusion as to whether or the rate - - - the

10   rent paid on the base rate - - - rent date was reliable or

11   not.

12   MR. TURKEL: Yes.

13   JUDGE GARCIA: Not so that you could go back and

14   reconstruct various rental - - -

15   MR. TURKEL: No. No. No. No.

16   JUDGE GARCIA: - - - payments.

17   MR. TURKEL: Yeah. I mean, one of the key

18   aspects of Regina, which has a relent path on this case, is

19   that the court declared the reconstruction method to be

20   unlawful precisely because it violated the four-year rule.

21   JUDGE WILSON: Let me ask you a small question

22   about the record, because I wonder if this is just a sort

23   of very nice wording dispute. I think, you've said that

24   there are - - - for 2007, there are fifty-five leases that

25   have been produced relative to these apartments. And the

1   tenants are saying that those aren't in the record.

2   And I'm wondering if both are true in the sense

3   that the reason those aren't in the record on summary

4   judgment is because at the time the summary judgment motion

5   was filed, Regina hadn't been decided. And so the - - -

6   what the rate was in 2007 wasn't conclusive the way it

7   would be after Regina - - -

8   MR. TURKEL: Absolutely. I mean - - -

9   JUDGE WILSON: - - - is that right?

10   MR. TURKEL: - - - the irony of this case is that

11   we're kind of trying to put Humpty Dumpty back together

12   again, because at the time that this case was decided by

13   Supreme Court, and prior thereto, when the tenants moved

14   for summary judgment based on document disobedience or

15   alleged document disobedience, everybody was laboring on

16   the reconstruction method. And if the issue is - - - well,

17   going to the issue of whether these documents are in the

18   record, when the tenants moved for summary judgment, they

19   moved for summary judgment based on document - - - alleged

20   document disobedience, not fraud.

21   And they said to Supreme Court, they said, we

22   have painstakingly, that's the word they used,

23   painstakingly gone through all the documents that the owner

24   has produced, and we have compiled a schedule showing what

25   was produced. And if you look at page 256 of the record,

1   what you'll see is a list of apartments.

2   And I would just point out in one particular

3   case, page 256 of the record, Exhibit 5 - - - or Exhibit V,

4   summary of documents provided by defendants.

5   On page 260- - - - 57 of the record, they have

6   this long list. The second one down, the notation,

7   apartment 1D, the lease commenced December 1st, 2007, it

8   terminated Oct - - - I'm sorry, November 30th, 2000 - - -

9   I'm sorry. Started on December 1st, 2006. Terminated on

10 Oct - - - November 2007. Tenant's name and the rent.

11   That is the tenants saying and stating to the

12 court that "we have this lease." This is a list of leases

13 that they already have. There are forty-one such instances

14 on this schedule. And then several months later, after we

15 had produced another ten or twelve or however many

16 thousands of documents, they submitted a second schedule -

17 - -

18   JUDGE WILSON: How do we know that's what that

19 schedule is?

20   MR. TURKEL: The tenants described it, Your

21 Honor. The tenants went to Supreme Court and - - - and,

22 again, based on alleged documents - - -

23   JUDGE TROUTMAN: So then, are they essentially

24 estopped from saying anything to the contrary?

25   MR. TURKEL: Yes. Yes. They created the

1   schedules. They described the schedules to the First

2   Department. If you'll just bear with me for one second.

3   They just said that, the First Department, they

4   were painstakingly put together. You know, we went through

5   this, and we did an audit, and we - - - we did all this.

6   And they put that schedule in, in lieu of the 10 or 15 or

7   17,000 documents under the voluminous documents exception.

8   And they went to the Supreme Court, and they went

9   to the Appellate Division, and they say, this is good as

10   gold. Take our word for it. We have reviewed the leases.

11   This is a list. This first list is what's in the record.

12   And the second list is what's not in the record.

13   They put it in - - - they put that list in the

14   record. That list conclusively shows that there are fifty-

15   five - - - at least fifty-five leases that were put in,

16   the - - - on the base date. Before the - - -

17   JUDGE WILSON: And for example, with the examp -

18   - - sorry. Over here again. With the example you pointed

19   us to, right - - - I forgot, the woman's name was Claudia

20   something or other - - - the - - - your understanding of

21   their point in putting that in where there's three leases

22   and that's it, just around the 2007 period - - -

23   MR. TURKEL: Right.

24   JUDGE WILSON: - - - is that they were trying to

25   establish that there weren't leases from before that.

1   MR. TURKEL: Yes.

2   JUDGE WILSON: Okay.

3   MR. TURKEL: That's - - -

4   JUDGE WILSON: I've got - - -

5   MR. TURKEL: I mean, that's part of what they

6   were trying to do.

7   JUDGE WILSON: Yes.

8   MR. TURKEL: I mean, according to them, it was a

9   schedule of what had been produced, however we want to

10   contextualize that or - - -

11   JUDGE WILSON: But that was for the purpose of

12   proving what hadn't been produced; is that fair?

13   MR. TURKEL: Well, the first list is these are

14   the documents we got from the landlord. And the second

15   one, which was several months later, after much more

16   discovery had continued, thousands and thousands of

17   documents, that was a schedule of "as of this date, this is

18   what we don't have." If you look at the two lists and you

19   do the math, there are fifty-five leases.

20   JUDGE WILSON: Yeah.

21   MR. TURKEL: And the tenants - - - and I think

22   it's unfortunate and regrettable - - - in the First

23   Department, they desc - - - they said, plaintiffs

24   painstakingly reviewed the records submitted by defendants

25   on discovery, provided a detailed and accurate analysis to

1 the court showing the deficiencies in the defendant's

2 rental histories. Then they said, plaintiff's attorneys

3 properly attached their motion as exhibits, so it's in the

4 record, summaries of the thousands of documents provided by

5 defendant. This was proper and the summaries were

6 admissible.

7   And they did it, as I said, under the voluminous

8 document rule.

9   Now they claim - - - and again, I think, it's

10 regrettable - - - they say that these summaries, which, I

11 think, have really backfired on them, raised merely the

12 suggestion that some base date leases were turned over upon

13 pretrial discovery. A suggestion is not enough to

14 establish that these records were provided. They submitted

15 them. They swore to their accuracy. And then when it came

16 to bounce back against them, they say, they're mere

17 suggestions.

18   Just the fact that they can see that some of the

19 base date leases are there, I think, is enough to warrant

20 reopening this.

21   On the issue of document - - - I'm sorry,

22 document production, I think, Judge Gische - - -

23   ACTING CHIEF JUDGE CANNATARO: Counsel, can we

24 save the document production for your rebuttal time?

25   MR. TURKEL: Certainly, Your Honor.

1   ACTING CHIEF JUDGE CANNATARO: Thank you.

2   MR. TURKEL: Thank you.

3   MR. LANGUEDOC: Good afternoon. May it please

4   the Court. My name is Ronald Languedoc. I'm appearing for

5   the plaintiffs. Your Honors, the Appellate Division

6   correctly held that the defendants' unmasked retroactive

7   registrations of these illegally deregulated apartments in

8   2012 was an attempt to avoid the court's adjudication of

9   the issues and to impose their own calculations of how to -

10   - -

11   JUDGE GARCIA: But how does that exactly happen

12   if Regina says, you look at what the actual rent paid on

13   the base date was? So how does that affect the reliability

14   of that calculation?

15   MR. LANGUEDOC: Well, it affects the reliability

16   of the calculation in a few ways. First of all, the - - -

17   it's not just a question of producing a lease that was in

18   effect on the base date, but it's the full rental history

19   thereafter, because the Rent Stabilization Code talks about

20   three possible bases for applying the default formula. One

21   being fraud; the other being the inability to produce a

22   base date lease; and the third being inability to produce -

23   - -

24   ACTING CHIEF JUDGE CANNATARO: But isn't - - -

25   MR. LANGUEDOC: - - - rental history.

1   ACTING CHIEF JUDGE CANNATARO: Isn't that the

2   problem, that you were pursuing the default formula in a

3   pre-Regina litigation, and suddenly, there was a game-

4   changing decision that made the default formula, I don't

5   know if it's totally irrelevant, but somewhat less relevant

6   to something like what - - - what Judge Garcia was

7   suggesting; just show us the lease and what you were paying

8   on the base date.

9   JUDGE GARCIA: And if you know the ba - - - let's

10 say, hypothetical, you know exactly what the rent was on

11 the base date. Isn't the formula, then, you are in

12 entitled, as landlord, to whatever increases you would have

13 gotten under the rules going forward?

14   MR. LANGUEDOC: Correct.

15   JUDGE GARCIA: And so the difference between what

16 you paid and what that calculation is are the damages. So

17 what's missing in the case where you can establish what was

18 paid?

19   MR. LANGUEDOC: Well, what is missing is not just

20 the base date but then the subsequent rental history. Then

21 there's the fact that - - -

22   JUDGE GARCIA: And that's just what's actually

23 paid, though, so that's a proof failing, you're saying.

24   MR. LANGUEDOC: It's - - - well, it's what - - -

25 whatever leases or renewal leases went - - - went in - - -

1   went into place, whether there were changes of tenancy,

2   whether there were individual apartment improvements, or

3   anything like that.

4   ACTING CHIEF JUDGE CANNATARO: Subsequent to the

5   base date.

6   MR. LANGUEDOC: Correct.

7   ACTING CHIEF JUDGE CANNATARO: So that - - -

8   that's a discussion about what allowed increases might have

9   occurred following the base date.

10   MR. LANGUEDOC: Correct.

11   ACTING CHIEF JUDGE CANNATARO: But the goal that

12   you were pursuing in this litigation was to try to

13   establish the rent on the base date using the

14   reconstruction method.

15   MR. LANGUEDOC: That was the goal in December

16   2015, when we brought the motion.

17   ACTING CHIEF JUDGE CANNATARO: Right.

18   MR. LANGUEDOC: That was the argument that we

19   made based on the limited authorities that were available

20   at the time. Then by the time we got to the Appellate

21   Division, which was 2021, Regina had already been decided.

22   The Appellate Division, fully cognizant of Regina, accepted

23   the Supreme Court's determination that the owner's actions

24   in 2011 and 2012 were designed to obviate an adjudication

25   of the - - - of legal rents. And thereby, it - - - that

1   combined with the landlord's failure to produce the leases

2   on the record.

3   ACTING CHIEF JUDGE CANNATARO: And as to that

4   first thing, I assume you take the position that that was

5   not an overly lenient view of fraud, at least as we meant

6   it in Regina, correct?

7   MR. LANGUEDOC: An overly lenient, you - - -

8   ACTING CHIEF JUDGE CANNATARO: In other words,

9   that their effort to reconstruct the rent the way they

10   did - - -

11   MR. LANGUEDOC: Right.

12   ACTING CHIEF JUDGE CANNATARO: - - - their

13   conclusion that that was fraud, you don't think that that

14   was unwarranted conclusion on their part?

15   MR. LANGUEDOC: No, that was fully warranted

16   conclusion, based upon what the landlord did here.

17   ACTING CHIEF JUDGE CANNATARO: And why, given the

18   elements of fraud that are so frequently stressed, and I

19   think, cited in the footnote in Regina, what - - - why is

20   that not the case?

21   MR. LANGUEDOC: Well, the footnote in Regina, the

22   footnote 7 in Regina, it relates back to a text in the

23   majority opinion, in which they're distinguishing between

24   the actions of owners in cases, like Thornton and Grimm,

25   and the cases - - - and the actions of the owners in the

1   cases before them. Where in the Regina - - - the four - -

2   - the Regina cases where the court had a complete rental

3   history and there was no serious allegation of fraud.

4   So I would argue that the footnote 7 has been

5   misconstrued by the landlord to mean that - - - you know,

6   the pleading requirements of CPLR 3016(b) are applicable

7   and so on. I don't think that - - - I don't think that was

8   the court's intention.

9   ACTING CHIEF JUDGE CANNATARO: So it's just a

10   pleading issue, the specificity of the pleadings?

11   MR. LANGUEDOC: Well - - -

12   ACTING CHIEF JUDGE CANNATARO: It doesn't change

13   the substantive law of fraud?

14   MR. LANGUEDOC: Well, it - - - it's not that the

15   tenants must prove a common law fraud claim in order to

16   establish that there was a fraudulent scheme. That they

17   must - - - they must - - - they must prove that there was a

18   scheme, that it was evading the Rent Stabilization Law in

19   some way.

20   There's no one size fits all approach. That - -

21   - there's a variety of circumstances. For example, what

22   was done in this case, which lardly - - - largely was

23   things that were done after we filed the action. But where

24   obfuscating of the record and made it impossible for anyone

25   to calculate what - - -

1   JUDGE GARCIA: But I - - - I - - -

2   MR. LANGUEDOC: - - - the rents were.

3   JUDGE GARCIA: I'm having - - - still having

4   trouble with that because all the actions complained of by

5   the landlord to place, I think, at the end of '11 - - -

6   2011, 2012 - - -

7   MR. LANGUEDOC: Right.

8   JUDGE GARCIA: - - - early. So the four-year

9   lookback period, as I understand, is October '07 to October

10   2011.

11   MR. LANGUEDOC: Correct.

12   JUDGE GARCIA: So it just seems like a proof

13   issue to me, then. Because whatever they did in 20- - - -

14   late 2011, early 2012, how does that affect what the

15   records are of what was paid over that four-year period?

16   MR. LANGUEDOC: It - - - it does not affect the

17   records of what was paid over that four-year period, if

18   those records were available and produced. And yes,

19   certainly, they did turn over some number of leases, in

20   effect, in October 2007 in the course of - - -

21   JUDGE GARCIA: So again, my question - - -

22   MR. LANGUEDOC: - - - the discovery.

23   JUDGE GARCIA: - - - then, is why isn't this a

24   proof issue and why is it a fraud issue?

25   MR. LANGUEDOC: Well, I think, it's both. I

1   And then in March 2012, the landlord went ahead, anyway,

2   and filed all of these registrations, and then started a

3   process of having tenants sign these illegal leases. And

4   from what we know in the record, twenty-nine tenants

5   refused to sign them.

6   That presumes that there must have been some

7   approximately fifty people who did probably sign them. We

8   don't know the number. So the letter - - - the letter that

9   was sent had no effect, apparently. It's not clear on the

10   record.

11   JUDGE SINGAS: But if we decided in Grimm that an

12   increase in rent can't be a colorable basis for fraud, what

13   else are you alleging? Like, what in the record are you

14   stating?

15   MR. LANGUEDOC: Well, we're alleging - - - we're

16   alleging a scheme which - - - by which apartments that had

17   been unlawfully deregulated were ostensibly placed back in

18   regulation but at much higher rents than what had ever been

19   charged and what the owner was entitled to ever collect.

20   And that that scheme has not - - - to - - - as far as we're

21   aware, to this day, has not been rectified.

22   JUDGE WILSON: Well, I thought that Judge - - -

23   Justice Singh issued an order that set interim rates.

24   MR. LANGUEDOC: Justice Singh issued an order in

25   2014 - - -

1   JUDGE WILSON: Yeah.

2   MR. LANGUEDOC: - - - directing that the - - -

3   all - - -the rents not be increased - - -

4   JUDGE WILSON: And that's been - - -

5   MR. LANGUEDOC: - - - without leave of court.

6   JUDGE WILSON: That - - - that's been in effect

7   since.

8   MR. LANGUEDOC: That has been in effect - - -

9   that was in effect until, I believe, 2021, when a

10   subsequent interim order was entered, which is in effect as

11   of today. Yes, that's correct.

12   JUDGE WILSON: So let me ask you. I take it that

13   even the defendants would say that there are certain of the

14   apartments at issue for which they haven't produced a lease

15   that was in effect as of 2007.

16   MR. LANGUEDOC: Right.

17   JUDGE WILSON: So what do you say should be done

18   as regard to those?

19   MR. LANGUEDOC: Where a lease was not produced -

20   - -

21   JUDGE WILSON: Yeah.

22   MR. LANGUEDOC: - - - as of 2007?

23   JUDGE WILSON: Where we don't know - - - let's

24   say we - - - let's assume, hypothetical, we don't know what

25   the rent was in 2007. Then what happens?

1   MR. LANGUEDOC: I think - - - well, what - - -

2   what is supposed to happen under the Rent Stabilization

3   Code is that the court would apply the default formula,

4   which is what the Appellate Division held.

5   JUDGE WILSON: And is it your view that there are

6   some - - - at least some apartments as to which that

7   information from 2007 is not available and, therefore, you

8   have to use it?

9   MR. LANGUEDOC: Absolutely.

10   JUDGE WILSON: Okay.

11   MR. LANGUEDOC: Absolutely, yes.

12   ACTING CHIEF JUDGE CANNATARO: Thank you,

13 Counsel.

14   MR. LANGUEDOC: Thank you.

15   ACTING CHIEF JUDGE CANNATARO: Counsel, is there

16 more discovery that needs to be done to determine what the

17 base rent is on those - - - I don't know what the number

18 is, of cases where - - - of apartments where you don't have

19 leases?

20   MR. TURKEL: Right. I think - - - I think, as

21 Justice Gische suggested in her dissent, because this whole

22 case was litigated at Supreme Court, the discovery demands,

23 the discovery orders, and Supreme Court's order as to what

24 was submitted and what was not submitted, it was done under

25 the wrong methodology, the reconstruction method, which was

1   found by this court in 2020 to be illegal. It was overly

2   broad because under the reconstruction method, the base

3   date is the last date that a rent stabilized tenant was

4   paying before the - - - the deregulation. That base date

5   is not 2007 it - - - for these seventy-two apartments. It

6   could be 2002, 1998, 1994.

7   So they were asking for thousands and thousands

8   of documents that they had no right to ask. I think, given

9   the rapidly evolving state of the law regarding what the

10   proper base date is, I mean, the court - - - when the court

11   found that we were in discovery disobedience, it was using

12   the wrong base date. I think, the fairest thing to do is

13   to remand it, as Justice Gische had suggested, for any

14   further discovery that's necessary. Now that we know what

15   the proper base date is, we can do all of this correctly.

16   JUDGE WILSON: I guess, the only problem I have

17   with that is that you described the request as over broad.

18   And I assume you tried to produce everything you had from

19   2007, right? I mean, you didn't withhold any leases from

20   2007.

21   MR. TURKEL: I - - - I cannot say, Your Honor. I

22   know that their schedules show that at least fifty-five

23   were submitted.

24   JUDGE WILSON: Right.

25   MR. TURKEL: It's possible that there were more

1   submitted. I think - - -

2   JUDGE WILSON: But those would already be - - -

3   have been produced in discovery.

4   MR. LANGUEDOC: Right. And - - - and I would

5   also point out that - - -

6   JUDGE WILSON: I mean, this case has been going

7   on a very long time. The - - -

8   MR. TURKEL: Right.

9   JUDGE WILSON: I take your point that the

10   discovery demand was extraordinarily broad, and you had to

11   produce a lot of things, but it - - - it strikes me as

12   improbable that you have leases from 2007 for some

13   apartments that you haven't yet produced.

14   MR. TURKEL: I think that - - - I understand Your

15   Honor's point of view. I think that, again, given the

16   initial mistake about all of this, that discovery can be

17   concluded very briefly so that the case can proceed under

18   the right discovery rule, under the correct base date.

19   JUDGE RIVERA: Is that - - - is that because

20   there's no fraud? When you say, the correct base date - -

21   -

22   MR. TURKEL: I would respectfully submit - - -

23   JUDGE RIVERA: I'm just trying to clarify the

24   genesis of that statement. When you say, the - - - we know

25   the correct base date.

1   MR. TURKEL: We now - - -

2   JUDGE RIVERA: We know that because - - -

3   MR. TURKEL: Oh, oh, yes.

4   JUDGE RIVERA: - - - there is no scheme.

5   MR. TURKEL: Assuming there's no fraud.

6   JUDGE RIVERA: There is no fraud.

7   MR. TURKEL: Yes.

8   JUDGE RIVERA: So if the court disagreed with

9   that, do you lose?

10   MR. TURKEL: Yes. Under a standard that, I

11   believe, was overly broad and that - - - that disregarded -

12   - - I mean, I also have a problem with the fact that the

13   tenants did not argue fraud in Supreme Court, and that we

14   specifically argued in the Appellate Division that the

15   tenants never allege fraud, and they certainly never lodged

16   a fraudulent scheme to deregulate.

17   JUDGE GARCIA: Counsel, does - - - fraud doesn't

18   affect the base date, right? It just affects - - -

19   MR. TURKEL: Not in this case.

20   JUDGE GARCIA: But it doesn't affect the base

21   date in any case. I mean, the base date is the base date,

22   right? I mean, it - - - fraud affects the reliability of

23   the actual rent paid on the base date, as I understand it.

24   You still have an October 2011 - - - 2007 base date, even

25   if there's fraud here, wouldn't you?

1   MR. TURKEL: Well, if under the Regina

2   conceptualization, there was a fraudulent scheme to

3   deregulate - - -

4   ACTING CHIEF JUDGE CANNATARO: You can look

5   further back.

6   MR. TURKEL: - - - that you can look further

7   back, that - - - that tainted the base date. It has to

8   taint the - - -

9   JUDGE GARCIA: It has to taint - - -

10   MR. TURKEL: Has to - - - it has to have that

11   effect.

12   JUDGE GARCIA: - - - the rent paid on the base

13   date. It doesn't tent - - - taint the base date.

14   MR. TURKEL: No, no, no. It taints the

15   reliability of the rent pace - - - I'm sorry, paid on the

16   actual base date.

17   Unless the court has any further questions?

18   ACTING CHIEF JUDGE CANNATARO: Thank you,

19   Counsel.

20   MR. TURKEL: Thank you.

21   (Court is adjourned)

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1   C E R T I F I C A T I O N

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3   I, Cynthia R. Piett, certify that the foregoing

4   transcript of proceedings in the Court of Appeals of

5   Kathryn Casey v. Whitehouse Estates, Inc., No. 10 was

6   prepared using the required transcription equipment and is

7   a true and accurate record of the proceedings.

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