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Revising the Limits on 'Personal Use'

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LAST month, an appeals court in Manhattan ruled that there was no limit on the number of apartments a building owner can remove from rent stabilization for personal use. The decision reverses a State Supreme Court ruling that an owner who was trying to take over all apartments in a stabilized building must first get permission from the state's Division of Housing and Community Renewal.

The unanimous decision of the Appellate Division, First Department, which covers Manhattan and the Bronx, involves Alistair and Catherine Economakis, the owners of a 15-unit building at 47 East Third Street in Manhattan.

In 2003, they started telling tenants that their rent-stabilized leases would not be renewed, so the owners could convert the building to their primary residence. The notices also contained plans for the conversion. In December 2003, the Economakises started eviction proceedings against six tenants who had refused to leave when their leases expired.

In the housing court proceeding that followed, the tenants contended that the plan to evict everyone in the building violated the Rent Stabilization Code. The housing court judge noted, however, that under the code, an owner was entitled to recover possession of "one or more dwelling units for personal use or occupancy," and that there was no limit on how much space the owner could recover.

At that point, five other tenants filed an action in State Supreme Court seeking an order preventing their eviction on the grounds that removing all tenants from the building — essentially removing the entire building from rent regulation — violated the Rent Stabilization Code.

In June 2005, Justice Paul G. Feinman issued a preliminary injunction barring the owners from taking any action to cancel or terminate the tenants' leases.

In April 2006, Justice Faviola A. Soto ruled that the Economakises had violated the Rent Stabilization Code by failing to get Division of Housing and Community Renewal approval before trying to take possession of the building, and permanently prohibited them from continuing with the evictions until they got such approval.

The owners then appealed, and on Feb. 14 the appellate court reversed the Supreme Court ruling. Writing for a unanimous court, Justice Luis A. Gonzalez ruled that "the clear and unambiguous provisions of both the Rent Stabilization Law and Code permit an owner to recover an unlimited number

of stabilized units for personal use and occupancy without D.H.C.R. approval."

(Justice Gonzalez said D.H.C.R. approval was necessary only when the owner plans to use the apartments in connection with a business or when the costs of removing violations filed by government agencies equal or exceed the value of the building.)

Jeffrey Turkel, the Manhattan lawyer who represented the owners, said he was not surprised by the ruling because the language of the Rent Stabilization Law is clear. "All we had to do was point the judges to the actual wording of the statute," he said.

Mr. Turkel added that the case was not over. "This ruling itself doesn't authorize anyone's eviction," he said. The owners still have to prove in housing court that they intend to occupy the entire building as their principal residence, he noted.

Dov Treiman, the editor of The Housing Court Reporter, said that while the decision allows property owners (but not business entities like corporations and partnerships) to remove an unlimited number of apartments from regulation for personal use, there was a practical limit to how large a building can be deregulated in this way. "The size of the building will at some point act as a natural kind of cap on the issue of good faith," he said.

Stephen Dobkin, the lawyer who represented the tenants in both courts, said his clients plan to appeal.