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## Property—Decontrol Order Required for Emergency Rent

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highways must be fairly specifically conferred by statute. Although in sympathy with the idea of vesting such authority in the Superintendent of Public Works, the Court will not imply it in the absence of a clear legislative intent to do so.

At first glance it would appear that the Court is giving the Public Authorities Law a fairly liberal construction and the Highway Law a very strict one, but it must be noted that in the case of the former there is express provision for the exercise of the Thruway Authority's power, and the defendant is attacking the validity of the Act itself. In the *Schulman* case the question is the interpretation of one clause of the Highway Law. It cannot be said that the Court is being more liberal when it upholds the validity of an act, than when it refuses to construe the provisions of an act as granting powers it feels the legislature never intended.

Granting this distinction, this still is not a proper case for the application of the rule of *ejusdem generis*. The words "and for other purposes" must be read in the context of the entire which reads "and for other purposes to improve safety conditions on the state highway system." The prior clauses of the Law did not refer to improving safety conditions and, therefore, the "and for other purposes" clause does not serve as a catch-all for the preceding clauses, but confers additional power on the Superintendent. As the Appellate Division stated, the determination of whether an action is necessary to improve safety conditions is for the Superintendent to decide and the courts should not interfere with his decision unless it is on its face unreasonable.<sup>25</sup>

T. C. L.

#### DECONTROL ORDER REQUIRED FOR EMERGENCY RENT

In *In re Sipl Realty Corp.*<sup>26</sup> the landlord sought increased rent under the emergency rent provisions of Section 2 of the Emergency Business Space Rent Control Law.<sup>27</sup> Since under Section 2, emergency rent is available only in rentals of business property, the landlord alleged that it was engaged in the rental of "business space" as defined in Section 2. For the whole premises to qualify as "business space" when only a portion is actually rented for business use, it is necessary that 60 percent of the rentable area and units be "lawfully occupied as business space."<sup>28</sup> Among the units counted as business space to

25. *Supra* note 22 at 274, 203 N.Y.S.2d at 711. The court then goes on to discuss why it thinks that the exercise of the power was not unreasonable in this case.

26. 8 N.Y.2d 319, 206 N.Y.S.2d 767 (1960).

27. N.Y. Unconsol. Laws § 8552(c) (McKinney 1961) provides:

(c) 'Emergency Rent.' The rent reserved or payable under any lease, agreement, or tenancy of business space in force on June first, nineteen hundred forty-four, plus fifty per centum of such rent . . . ; provided, however, that if the business space was not used or occupied as business space on June first, nineteen hundred forty-four, the emergency rent shall be the reasonable rent therefore as business space on such date, plus fifty per centum thereof, to be fixed by agreement, by arbitration, or by the supreme court upon the basis of the rent charged on such date for the most nearly comparable business space in the same building or other rental area, or other satisfactory evidence; . . .

28. N.Y. Unconsol. Laws § 8552(a) (McKinney 1961) provides:

satisfy the 60 percent requirement were 15 units converted from residential to business space after 1944. The tenants argued that before the whole premises could be "lawfully occupied as business space" within Section 2 the landlord had to secure decontrol orders for residential property converted to business space, as required by Section 13 of the regulations of the Housing Rent Commission.<sup>29</sup>

At the time application for emergency rent was made in the Supreme Court, such orders had not yet been obtained.

In the Supreme Court,<sup>30</sup> the landlord successfully contended that Section 13 did not apply in a Section 2 proceeding for increased rent. The court was troubled, however, by the fact that Section 2 gave the Supreme Court authority to set emergency rent rates without reference to decontrol orders while Section 13, a later regulation passed pursuant to Section 2, required such orders. It was held that Section 2 evidenced an intention of the legislature not to require such orders and that the Commission was foreclosed from adding such a requirement in Section 13.

With one dissent, the Appellate Division reversed on grounds substantially the same as those subsequently adopted by the Court of Appeals.<sup>31</sup>

Even though Sipal Realty had secured the decontrol orders required by Section 13 before argument in the Court of Appeals, it nevertheless argued for reinstatement of the Supreme Court's decision, apparently fearing that the retroactive decontrol ordered by the Commission in the decontrol orders would not be upheld by the courts because of lack of statutory authority.<sup>32</sup>

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(a) 'Business Space.' All rental space other than . . . (2) dwelling space . . . in . . . apartment houses, dwelling and other housing accommodations, except, on and after March first, nineteen hundred fifty-two, a building in which at least sixty per centum of the total rentable area . . . [and] of the total number of units formerly used as dwelling space, is lawfully occupied as business space on such date; . . .

29. N.Y. Unconsol. Laws, Rent and Eviction Regulations of the Temporary State Housing Rent Commission § 13 (McKinney's Appendix 1961) provides:

Any housing accommodation subject to these Regulations which may be rented on or after May 1, 1955 for commercial or professional use shall continue to be subject to control and the landlord may not collect more than the maximum rent until an order is issued by the Administrator exempting the housing accommodation from these Regulations during the period of occupancy by the tenant. Such order shall be issued by the Administrator where he finds that the renting [complies with the requirements of the state and local authorities and] was made in good faith without any intent to evade the Act or these Regulations and shall be effective as of the date of the commercial or professional renting.

Bracketed material deleted by amendment effective June 1, 1959.

30. 16 Misc. 2d 827, 182 N.Y.S.2d 237 (Sup. Ct. 1958).

31. 8 A.D.2d 355, 188 N.Y.S.2d 910 (1st Dep't 1959).

32. For full development of arguments see Brief for Appellants, pp. 27-49; Brief for Respondents, pp. 34-41; Reply Brief for Appellants, pp. 7-11: The tenants argued that if the legislature had intended to allow retroactive decontrol orders in Section 2 proceedings, it would have made express provision for such, as found in Section 4 of the Emergency Business Space Rent Control Law. They contended that this fact showed the legislature did not impliedly authorize retroactive decontrol in Section 2 proceedings.

The landlord's main contention was that since the purpose of the emergency rent provisions was to allow business rent on business space, the point at which business rent

The landlord's arguments before the Court of Appeals followed two courses. The Court rejected the landlord's first contention that the regulation was invalid because it was in conflict with the authorizing statute of the Commission. It was held that while Section 2 gave the Supreme Court the power to determine the amount of the increased rent, Section 13 merely gave the Commission the power to rule on the validity of the change from residential to business use. The Court concluded that "lawfully occupied" as used in Section 2 included the later regulation known as Section 13 and that decontrol orders were necessary before Section 2 emergency rent could be allowed by the Supreme Court. The holding refuted any authority in the Supreme Court to rule for itself on the validity of the conversion to business use.

Sipal Realty then contended that even if the sections were consistent, Section 13 had no application to these facts. Noting that one basic purpose of Section 13 was to prevent the unscrupulous landlord from forcing the tenant of residential property into signing a business lease so as to take advantage of emergency rent,<sup>33</sup> it was argued that, here, no such unethical practices could take place since there were structural changes that evidenced a conversion of residential to business property.

Along the same lines, appellant argued that the changes were such that no longer were the premises "housing accommodations" within the meaning of Section 13. The landlord cited the Residential Rent Law which defines "housing accommodations" in terms of sleeping places and boarding houses.<sup>34</sup> Appellants then attempted to show that the suites in question were no longer suitable for these uses.

The Court answered both arguments by stating that structural change was only one of the factors to be considered by the Administrator in determining whether there had been a good faith conversion.

As a result of this decision it is now settled that when residential space is converted to business space, the Commission and not the Court must be satisfied that the conversion is legitimate and not merely a device to get increased rent, before the Supreme Court can increase the rent as authorized by Section 2. Until decontrol orders are issued the premises are subject to residential rent control.

P. D. C.

YEAR-DELAY CLAUSE IN LEGISLATION IN REGARD TO FIXATION OF MAXIMUM RENT CONSTITUTIONAL

In *I.L.F.Y. Co. v. Temporary State Housing Rent Commission*,<sup>35</sup> the

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became due was when the premises were converted to business space. In addition the landlord argued that since rent control was in derogation of his common law rights, any provision must be construed in the light most favorable to him.

33. See "Note of Commission" following Section 13 of the Rent and Eviction Regulations.

34. N.Y. Unconsol. Laws § 8582(2) (McKinney 1961).

35. 10 N.Y.2d 263, 219 N.Y.S.2d 249 (1961).