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Latham's 7-Year Fight to Reshape New York City Property Taxes

By Ross Todd

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When a team from **Latham & Watkins** filed a long-shot challenge to New York City's property tax system back in 2017, they brought the data: Homeowners in Canarsie, a majority-minority neighborhood, were paying effectively three times the tax rate charged their Brooklyn neighbors in wealthy, majority-white Park Slope. Some upscale cooperatives valued at $4,500 per square foot were being taxed as if they were rent-regulated apartments worth $188 per square foot.

The Latham lawyers also brought the quotes, too: A slew of city officials previously made public statements backing the core of their case, including then-Mayor Bill de Blasio who said there were "obvious inequities" in the system.

But with all that fodder, the Latham lawyers were still left with a big strategic question: Sue the state, whose labyrinth of regulations the city blamed for how it assessed property value? Sue the city, who ultimately determined who paid what taxes? Or sue them both?

Latham's **Jimmy Brandt**, a commercial litigation partner in New York who has helped lead the firm's effort representing an advocacy group called Tax Equity Now New York, or TENNY, in the suit, said that the decision of whom to sue was "tricky." Target one entity and you might curry favor with the other to help make your case. But ultimately, the team decided to sue both.

Courtesy photos

(l-r) Latham & Watkins partners Jimmy Brandt and Michael Bern and of counsel Jonathan Lippman, the former Chief Judge of New York.

"It put the state and the city in the position where the city was saying, 'We have no choice but to do X, Y and Z because the state law is telling us we have to' and the state was saying 'No, it's not. You could fix this yourself if you wanted to," Brandt said.

Last month, after the Latham team survived a motion to dismiss at the trial court, but suffered a setback in the intermediate appellate court, the Court of Appeals, New York's high court, finally weighed in with its view: The court let TENNY's claims under the federal Fair Housing

Act and the state's property tax law move forward against the city. A 4-3 majority of the court found TENNY made a showing that the "system is unfair, inequitable and has a discriminatory disparate impact on certain protected classes of New York City property owners."

Latham of counsel **Jonathan Lippman**, the former Chief Judge of the Court of Appeals who has been part of the team representing TENNY from the beginning, said this was "a case which was so directly related to fairness and justice."

"This is something that works on so many levels, and not just the great legal issues that had to do with the constitutionality of the system," he said. "There were such great public policy [issues] and issues related to the well-being of the city and state of New York."

Both Brandt and Washington, D.C.-based appellate partner **Michael Bern**, said the firm got the call from TENNY in part because of Latham's previous successful challenge of New York City's ban on large sugary drinks implemented during Michael Bloomberg's administration. That effort involved marrying the firm's New York commercial litigation know-how with the strategic approach of the D.C.-based appellate group—one that Brandt calls "very commercial" compared to the appellate groups you might find at other firms.

In fact, Brandt admits that Bern and members of the appellate team took the lead in drafting the complaint in the property tax case. Bern said that effort involved studying up on New York City's "absolutely incomprehensible" tax system—something he estimated five people in the entire city understand. Brandt and Bern said that they were fortunate that Martha Stark, a policy director at TENNY and a former Commissioner of the New York City Department of Finance during the Bloomberg Administration, was among that select group that could decipher how the city decides who pays what.

"We spent a lot of time really trying to understand the facts: How does this system work? Where does it go wrong? What are the problems that result from it?" Bern said. Then, after they had a grasp on the mechanics, the team pored over both the New York law—including the real estate law and older rarely litigated state constitutional provisions—and federal tools such as the Fair Housing Act. "[The FHA] is an area where there haven't been a lot of cases involving property taxes, in part, because there are so few systems that are as convoluted as New York that result in this discriminatory treatment," Bern said.

Bern said that while some cases can go from intake to complaint in two weeks or a month, that wasn't the case here. "We spent a lot of time really trying to understand the facts, really trying to understand the law," he said. "You're putting together something like a 300-paragraph complaint … using the city's own data and the city's own admissions to really tell the story to the court," he said.

And Lippman pointed out that the complaint itself—which laid out the disparities between Canarsie and Park Slope, and co-op owners and renters—helped frame the public debate around the case.

"Those kinds of comparisons wound up being some of the talking points that got into the press, and got a lot of attention to the case, because it had never been put together exactly in that way," he said. "It took bringing the lawsuit to really bring it to the front of everyone's mind in the state."

Brandt said although procedurally speaking last month's ruling only gets TENNY's suit past a motion to dismiss, the city is on notice that the state's high court finds its current way of doing things is illegal and discriminatory. "The Court of Appeals has dictated what the law is. And we anticipate that the city government will act in compliance with law," said Brandt, noting the city is currently working on its tax roll for the next fiscal year. "Whether we turn out to be right about that expectation or not remains to be seen."

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