309E75 Stone LLC v Ramos
2024 NY Slip Op 32172(U)
June 14, 2024
Civil Court of the City of New York, New York County
Docket Number: L&T 320376-23/NY
Judge: Alberto M. Gonzalez

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART G

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309E75 STONE LLC,

PETITIONER/LANDLORD

L&T 320376-23/NY

-against-

DECISION/ORDER

MICHAEL RAMOS,

RESPONDENT/TENANT

"JOHN DOE" AND "JANE DOE"

RESPONDENT/
UNDERTENANTS

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Hon. Alberto Gonzalez:

Recitation as required by CPLR Rule 2219(A), of the papers considered in the review of Respondent's motion for an order granting Respondent leave to conduct limited discovery pursuant to CPLR § 408, and Petitioner's cross motion to deny Respondent's discovery motion, granting Petitioner partial summary judgment awarding Petitioner a final judgment of possession as against Michael Ramos, John Doe and Jane Doe and a default judgment against John Doe and Jane Doe and dismissing Respondent's answer, affirmative defenses and counterclaims.

Papers	NYSCEF DOC #
[Respondent's] Notice of Motion;	9

[Respondent's] Affidavit or Affirmation in Support of Motion;	10
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PROCEDURAL HISTORY

The instant holdover proceeding was initiated by the filing of a notice of petition and petition, on October 19, 2023, against Respondents Michael Ramos[1], John Doe and Jane Doe. *See NYSCEF # 1, 2, 3.*

The petition alleges that, "[t]he premises are not subject to the City Rent Control Law or the Rent Stabilization Law of 1974, as amended, pursuant to Section 2520.11(r) of the Rent Stabilization Code, and Section 26-504.2 of the Rent Stabilization Law (repealed), by reason of high rent vacancy deregulation." *See NYSCEF # 1* ¶ 7.

The petition also annexes to it a notice entitled, "Combined Ninety (90) Notice of Non-Renewal And Termination Of Tenancy." (herein referred to as "notice.") *See NYSCEF # 1*, Pg. 6.

The notice states, in part, as follows:

"PLEASE TAKE NOTICE that the undersigned ("Landlord") is the Landlord and the Owner of the premises involved, does hereby elect not to renew your lease and has elected to terminate your month-to-month tenancy in the premises involved effective as of September 30, 2023. PLEASE TAKE FURTHER NOTICE that you and all other persons occupying the premises involved are hereby required to quit, vacate and surrender possession of the same to the Landlord on or before the 30th Day of September 2023 that being at least Ninety (90) Days from the date of service of this Notice upon you, as well as the day on which your term expires. Further and unless you voluntarily vacate the premises, as aforesaid, the Landlord will commence summary proceedings under Article 7 of the Real Property Actions and Proceedings Law to remove you from said premises for the holding over after the expiration of your term in the Civil Court of the City of New York, and will demand in said proceeding the value of your use and occupancy of the premises during such holding over." *See NYSCEF # 1*, Pg. 6.

Thereafter, the petition was first made returnable on November 9, 2023 at 9:30am in Part G, Room 581. The proceeding was adjourned on November 9, 2023 to January 19, 2024 at 9:30am. On January 19, 2024, Manhattan Legal Services appeared on Respondent Michael

[1] Michael Ramos took possession of the subject premises in 2020, per a "market rate lease" for a monthly rent of $4,100.

Ramos's behalf. *See NYSCEF # 5 (Notice of Appearance)*. On January 19, 2024 the proceeding was again adjourned to April 15, 2024 at 9:30am.

Before the April 15, 2024 hearing, Respondent's counsel filed an Answer with the court. *See NYSCEF # 7*. The answer, dated March 8, 2024, asserts several defenses and counterclaims, including "Second Defense and First Counterclaim: Illegal Deregulation And Overcharge." Respondent's counsel writes, concerning their second defense and first counterclaim: "Petitioner has willfully and fraudulently deregulated the subject premises from rent stabilization and has overcharged Respondent by denying him a rent stabilized lease that sets rent as the appropriate Rent Guidelines Board ("RGB") rate since the commencement of his tenancy in the subject premises, which began on or around 2020.

Respondent's counsel further writes:

"According to the Division of Homes and Community Renewal's ("DHCR") rental history for the subject premises, the first rent registration on file was reported or or around 1984, when tenant "Karely Berky" or "Korely Berky" was purportedly paying a legal regulated rent of $232.00 for the rent stabilized subject premises. Tenant "Karely Berky" then continued to reside in the rent stabilized subject premises and was subject to incremental rent increases during each lease renewal until the end of the 2004 lease term; by the end of the 2004 lease term – on or around September 30, 2004 – "Karely Berky" was purportedly paying a monthly rent of $596.23 for the rent stabilized subject premises. According to the DHCR rent history, during the lease term which commenced on or around September 15, 2004, and concluded on September 30, 2005 – before the termination of "Karely Berky's" 2004 lease term, which was purported to end on September 30, 2004 – two new tenants – "Chanceller Peterson" and "Russell Savage" – moved into the rent stabilized subject premises and were purportedly subject to a legal rent of $1,850.00 for the subject premises, which remained rent stabilized. Notwithstanding that the lease terms for tenants "Karely Berky" and "Chancellor Peterson" and "Russell Savage" contain an overlap, there is also an exorbitant and unexplained increase in rent between the leases and changes in tenancy, all while the subject premises remained occupied and subject to rent stabilized. For the lease term ending on or around September 30, 2004, "Karely Berky" was subject to a rent of $596.23 for the rent stabilized subject premises; meanwhile, for the lease term running from September 15, 2004 and concluding September 30, 2005, tenants "Chancellor Peterson" and "Russell Savage" paid a monthly rent of $1,850.00 for the rent stabilized subject premises. This is a rental increase of approximately 210.28%, well beyond the rental rate increase permitted under the RGB guidelines. According to the DHCR rent history, after the conclusion of the tenancies of "Chanceller Peterson" and "Russell Savage" – which purportedly occurred on or around September 30, 2005 when their lease term expired, Petitioner registered

the subject premises as exempt due to high rent vacancy on or around 2006. Notably, the high rent vacancy registration status for the year 2006 was filed by the owner to DHCR on or around November 21, 2011. However, Petitioner provided no reason for this huge rent increase other than "VAC/LEASE," or vacancy lease and does not seem to claim any alleged improvement." *See NYSCEF # 7* ¶ 20-23.

Respondent then states: "[h]owever, then Petitioner inexplicably re-regulated the subject apartment. After the purported high rent vacancy exemption period, and beginning during the lease term which commenced or or around October 1, 2006, the subject premises continued to be subject to rent stabilization at a purported legal rental rate of $2,275.78, and with a preferential rent set at $2,137.12. Petitioner continued to register the apartment as rent stabilized until 2010, with incremental rental increases: a purported legal rent of $2,344.05 charged from on or around October 1, 2007 to September 30, 2008 (with a preferential rent of $2,201.23); a purported legal rent of $2,449.53 (with a preferential rent of $2,300.29) from on or around October 1, 2008 to September 30 2009; a purported legal rent of $2,449.53 (with a preferential rent of $1,850.00) from on or around December 15, 2009 to December 31, 2010. Petitioner charged a preferential rent to each alleged legal regulated tenant during that period. Thereafter, after 2010, Petitioner failed to file another registration for the subject premises." *See NYSCEF # 7* ¶ 25-27.

On April 15, 2024, the parties again adjourned the proceeding to June 10, 2024 at 10:30am, for Respondent to file a motion for discovery. *See NYSCEF # 8*.

Respondent filed their motion for discovery on May 14, 2024, writing "[a]ccordingly, the totality of circumstances in the record indicate that Petitioner has engaged in illegal deregulation and unlawful overcharge, and thus limited discovery is required. This Court should granted leave to Mr. Ramos to conduct limited discovery on his defenses and counterclaims of illegal deregulation and unlawful overcharge as there is ample need for disclosure, and limited discovery is necessary for Mr. Ramos to litigate his claims and protect his rights as a rent stabilized tenant." *See NYSCEF # 11* ¶ 6.

Respondent further writes, "[t]he totality of the circumstances show additional indicia of fraud and include Petitioner's pattern of deregulating rent stabilized apartments in the absence of Department of Building ("DOB") permits that would allow such deregulations. According to Petitioner's filings with the Department of Finance ("DOF"), in just one year between 2011 and 2012, Petitioner purportedly deregulated 16 units in the subject building. In 2011, Petitioner

reported 26 rent stabilized units in the subject building – out of the 27 units in the building. Then just one year later, in 2012, Petitioner reported only 10 rent stabilized units, allegedly deregulating 16 units in just one year." *See NYSCEF # 11* ¶ 17.

Respondent argues that under these facts they have ample need for disclosure and meet the Farkas test requirements. *See NYSCEF # 11* ¶ 33-40. Further, the motion argues it has a basis in law including the "totality of circumstances," standard as per Chapter 96 of the 2024 Session Law. *See NYSCEF # 11* ¶ 31.

Petitioner cross moves, seeking to deny Respondent's motion. Specifically, Petitioner writes "[h]ere, Respondent's moving papers fail to show entitled to discovery. Specifically, Respondent's pending requests do not withstand the scrutiny of the *Farkas* test, as the documents demanded are overly broad, are not narrowly tailored, and request production of documents far beyond the applicable statute of limitations." *See NYSCEF # 23* Pg. 4. Petitioner alleges that the discovery is beyond the applicable four year rule issued by Court of Appeals in *Regina Metro Co. LLC*, with Respondent seeking documents back to 2003. *See NYSCEF # 23* Pg. 5. Petitioner argues that Respondent is required to prove fraud before the court permits review of rent records prior to the base date. *Id.*

Petitioner alleges that it is irrelevant that other units in the building were deregulated or that prior tenants in the unit were charged preferential rents, as it fails to indicate a fraudulent scheme to deregulate the unit. *See NYSCEF # 23* Pg. 7. Petitioner also alleges that the apartment was re-registered in error, after it had been exempted. *Id.* Specifically, Petitioner writes, "As such, Petitioner's erroneous 2007 registration – which registered the unit as rent stabilized ***after*** it had been statutorily deregulated pursuant to high-rent vacancy – could not have conferred rent stabilization status on the prior tenant of record when the unit necessarily remained fair market.

By the same token, any registration after 2007 – and any perceived defects raised by Respondent thereto – are irrelevant to the pending motions, as they are the consequence of a mistaken registration in 2007." *Id.* Petitioner writes that Respondent is only able to articulate one issue with the rent history – an increase between registration years 2004 and 2005. *See NYSCEF # 23* Pg. 8.

Petitioner then moves to strike Respondent's affirmative defenses and counterclaims, as they "constitute boilerplate allegations without any relationship to the facts alleged in the Petition and should accordingly be stricken." *See NYSCEF # 23* Pg. 10.

Petitioner then seeks summary judgment as "Landlord establishes the prima facie elements of the case through documentary evidence and sworn testimony from Landlord's agent, such that there is no issue of fact regarding Petitioner's entitlement to possession of the Subject-Premises." *See NYSCEF # 23* Pg. 12. Finally, Petitioner seeks a default judgment as against the non appearing parties. *See NYSCEF # 23* Pg. 13.

In reply, Respondent writes that "Petitioner has failed to demonstrate why Respondent is not entitled to discovery in the instant proceeding, where both illegal deregulation and unlawful overcharge are alleged. Further, Petitioner has failed to cite the new standard that courts must use to analyze claims concerning illegal deregulation and unlawful overcharge." *See NYSCEF # 24* ¶ 10. Respondent further writes that Respondent fails to demonstrate a lack of merit to any of its affirmative defenses and counterclaims. *See NYSCEF # 24* ¶ 19. Concerning Petitioner's summary judgment, Respondent writes that Respondent has raised several triable issues of fact and has sought the production of documents, as such the motion should be denied. *See NYSCEF # 24* ¶ 39.

Discussion

Section 408 of the CPLR authorized the use of discovery in summary proceeding with permission of the court if ample need is shown. Disclosure, "may assist the speedy disposition of a case when it has served the purpose of clarifying the issues for trial." *New York University v. Farkas*, 121 Misc.2d 643, 468 N.Y.S.2d 808 (Civ. Ct. N.Y. Cty. 1983)

In *New York University v. Farkas*, the court set forth six factors to consider when determining whether discovery is appropriate pursuant to CPLR § 408:

1) whether the party seeking discovery has asserted facts to establish a cause of action or defense;
2) whether there is a need to determine information directly related to the cause of action;
3) whether the requested discovery is carefully tailored and likely to clarify the disputed facts;
4) whether prejudice will result;
5) Whether prejudice can be diminished or alleviated, for example by prescribing a short time period to conduct discovery; and
6) Whether the court, in its supervisory role, can structure discovery so that the party against whom discovery is sought, particularly pro se tenant, will be protected and not adversely affected by the discovery requests.

In nonpayment proceedings, such as the instant one, tenants are allowed to assert claims of unlawful deregulation and rent overcharge to defend against nonpayment proceedings, and in pursuit of said claims, seek disclosure from the landlord.

As a result of the Housing Stability and Tenant Protection Act (HSTPA) of 2019, overcharge complaints were to be investigated by, "consider[ing] all available rent history which is reasonably necessary to make such determinations." 2019 McKinney's Session Law News of NY, Ch. 36, § 1 at Part F, § 6. The HSTPA, changed the analysis of rent overcharges, in that prior to 2019, rent overcharge claims were generally subject to a four-year statute of limitation, but events dating beyond the four-year statute of limitations could be considered – most notably to determine if the apt is rent regulated or to determine "whether a fraudulent scheme to destabilize

the apartment tainted the reliability of the rent on the base date." *See Gersten v. 56 7th Ave LLC*, 88 AD3d 189, 928 NYS2d 515 (App. Div. 1st. Dept);

The Court of Appeals, a year after the passage of the HSTPA, held in *Matter of Regina Metro Co., LLC* that, "the overcharge calculation amendments (of the HSTPA) cannot be applied retroactively to overcharges that occurred prior to their enactment." *See Austin v. 25 Grove St. LLC*, 202 A.D.3d 429, 162 N.Y.S.3d 342 (App. Div. 1st. Dep't. 2022). As such, any overcharge claims, which were alleged to have occurred prior to the passage of the HSTPA, were to have the prior law applied. *Id.*

The Court in Regina specifically states, "The rule that emerges from our precedent in that, under prior law, review of rental history outside the four-year lookback period was permitted only in the limited category of cases where the tenant produced evidence of a fraudulent scheme to deregulate, and even then, solely to ascertain whether fraud occurred - not to furnish evidence for calculation of the base date rent or permit recovery for years of overcharges barred by the statute of limitations." *Regina Metropolitan Co., LLC v. New York State Division of Housing and Community Renewal*, 154 N.E.3d 972, 130 N.Y.S.3d 759 (2020).

Appellate Courts subsequently held that when pleading an overcharge claim, it must be pled as common law fraud: "evidence of representation of material fact, falsity, scienter, reliance and injury." *Burrows v. 75-25 153rd Street, LLC*. 215 A.D.3d 105, 189 N.Y.S.3d 1 (App. Div. 1st Dep't. 2023).

However, the current law to be applied to Respondent's overcharge claim is that of the Totality Of The Circumstances.

Pursuant, to the Section 2-a of Part B of Chapter 760 of the Law of 2023 , as follows:

"When a colorable claim than an owner has engaged in a fraudulent scheme to deregulate a unit is properly raised as part of a proceeding before a court of competent jurisdiction or the state

division of housing and community renewal, a court of competent jurisdiction or the state division of housing and community renewal shall issue a determination as to whether the owner knowingly engaged in such fraudulent scheme after a consideration of the totality of the circumstances. In making such determination, the court or the division shall consider all of the relevant facts and all applicable statutory and regulatory law and controlling authorities, provided that there need not be a finding that all of the elements of common law fraud, including evidence of a misrepresentation of material fact, falsity, scienter, reliance and injury, were satisfied in order to make a determination that a fraudulent scheme to deregulate a unit was committed if the totality of the circumstances nonetheless indicate that such fraudulent scheme to deregulate a unit was committed." *See* Section 2-a of Part B of Chapter 760 of the Law of 2023.

"Generally, an increase in the rent alone will not be sufficient to establish a "colorable claim of fraud," and a mere allegation of fraud alone, without more, will not be sufficient to required DHCR to inquire further. What is required is evidence of a landlord's fraudulent deregulation scheme to remove an apartment from the protection of rent stabilization. As in *Thorton*, the rental history may be examined for the limited purposes of determining whether a fraudulent scheme to destabilize the apartment tainted the reliability of the rent on the base date." *Grimm vs. State of New York Division of Housing and Community Renewal Office of Rent Administration* (2010).

In the instant matter, the court grants Respondent's disclosure motion. Respondent has made out sufficient facts, under the totality of the circumstances, to raise a colorable claim of fraud. The multiple inconsistencies raised by Respondent in the DHCR rent registration, including the unexplained rent increases, the different and overlapping tenancies and the re-registering of the apartment, among other allegations, are sufficient grounds to grant Respondent disclosure. Further, it should be noted that Petitioner fails to address the new standard in its motion.

In addition, Chapter 760, states that, "[n]othing in this act, or the HSTPA, or prior law, shall be construed as restricting, impeding or diminishing the use of records of any age or type

going back to any date that may be relevant, for purposes of determining the status of any apartment under the rent stabilization law." *See* Section 2 of Chapter 760 of the Law of 2023.

It is well established that a court may review the rental history in an apartment before the limitation period of four years, to determine an apartment's rent regulatory status, which is not subject to a statute of limitations and may be determined at any time during a tenancy. *See Tovar vs. Adam's Tower L.P.*, 2023 NY Slip Op 33594(U) (Sup. Ct. N.Y. Cty. 2023); *150 E.Third St. LLC vs. Ryan,* 201 A.D.3d 582, 158 N.Y.S.3d 555 (Mem) (App. Div. 1st Dep't. 2022); *Kostic vs. New York State Division of Housing and Community Renewal*, 188 A.D.3d 569, 137 N.Y.S.3d 297 (App. Div. 1st Dep't. 2020) ("Regardless of its age, an apartment's rent history is always subject to review to determine whether a unit is rent stabilized (Matter of Regina Metro. Co., LLC vs. New York State Div. of Hous & Community Renewal, 35 N.Y.3D 332, 351 N 4, 130 N.Y.S.3d 759, 154 N.E.3d 972 [noting critical difference between overcharge claim and challenge to deregulated status], 360 [upholding declaration that apartment is rent stabilized based upon history preceding lookback period notwithstanding that there may be no money damages] [2020] [.]")

Respondent's motion also moves for disclosure to determine the regulatory status of the apartments.

As such, Petitioner's counsel shall provide Respondent's counsel with a response to Respondent's proposed request for production of documents and interrogatories within 45 days of service of this decision and a Notice of Entry. To the extent that Petitioner does not have custody or control of the documents, it shall produce an affidavit from someone with personal knowledge stating such.

Further, the court denies Petitioner's motion to strike Respondent's defenses and counterclaims. CPLR § 3211(b) provides that, "[a] party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit." The allegations set forth in the answer must be viewed in the light most favorable to the defendant (182 Fifth Ave. v. Design Dev. Concepts, 300 A.D.2d 198, 199, 751 N.Y.S.2d 739 [1st Dept. 2002]), and "the defendant is entitled to the benefit of every reasonable intendment of the pleading, which is to be liberally construed" [citing to *534 E.11th St Hous. Dev Fund Corp vs. Hendrick*]. Further, the court should not dismiss a defense where there remain questions of fact requiring a trial (id.)." *Granite State Ins. Co. vs. Transatlantic Reinsurance Co.,* 132 A.D.3d 479, 19 N.Y.S.3d 13 (App. Div. 1st. Dep't. 2015). Respondent's defenses and counterclaims are meritorious and withstand Petitioner's motion.

Similarly, the court denies Petitioner's summary judgment motion. Summary judgment is a drastic remedy that should be granted only if no triable issues of fact exist and the movant is entitled to judgment as a matter of law. *See Alvarez v. Prospect Hosp.,* 68 N.Y.2d 320, 508 N.Y.S.2d (1986). "The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851, 487 N.Y.S.2d 316 (1985); *151 E.19th Street, LLC v. Silverberg*, 14 Misc.3d 139A, 836 N.Y.S.2d 501 (Table) (App. Term. 1st Dep't. 2007). Respondent has raised several issues concerning the subject apartment's regulatory status and fraud, which require the court to deny Petitioner's motion for summary judgment. The court also denies Petitioner's motion for a default judgment, without prejudice to renew at trial.

CONCLUSION

For the reasons stated above, it is hereby ORDERED that Respondent's motion for disclosure is GRANTED. It is also ORDERED that Petitioner's motion is DENIED. The proceeding is adjourned to August 20, 2024 at 10:30am in Part G, Room 581 for all purposes.

Hon. Alberto M. Gonzalez, HCJ

Dated: New York, New York
June 14, 2024

ALBERTO GONZALEZ
JUDGE, HOUSING COURT