557-559 Wilson Avenue Realty, Petitioner v. Ella Murdough, "John Doe" and "Jane Doe" Respondent(s), 66636/2014

66636/2014

Civil Court, Kings County, Housing Part S
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Cite as: 557-559 Wilson Avenue Realty v. Murdough, 66636/2014, NYLJ 1202720127221, at *1 (Civ., KI, Decided February 5, 2015)
66636/2014

Judge Eleanora Ofshtein
Read Summary of Decision
Decided: February 5, 2015

ATTORNEYS

Representing the Respondent-Tenant: Karen May Bacdayan, Esq., Legal Services NYC Brooklyn Programs.
Representing the Petitioner-Landlord: Cohen Hurkin Ehrenfeld Pomerantz, Tenenbaum.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Motion for: Summary judgment or in the alternative Discovery pursuant to CPLR §408:
Papers Numbered
Notice of Motion and Affidavits Annexed 1
Answering Affidavits 2
Reply 3

DECISION/ORDER

*1
Upon the foregoing cited papers, the Decision/Order on this motion is as follows:
Petitioner commenced this holdover proceeding against respondent, Ella Murdough, by service of a Notice of Petition and Petition, after service of a thirty-day Notice of Termination. Respondent, represented by counsel, filed a Verified Answer and Counterclaims, which asserts three affirmative defenses, including a claim that the apartment is subject to Rent Stabilization. Respondent now moves for summary judgment, arguing petitioner has failed to comply with the Rent Stabilization Code, and has failed to plead a proper cause of action. In the alternative, respondent seeks leave of court to conduct pre-trial discovery regarding Individual Apartment Improvements and other claimed rent increases for the subject premises from 2003.
*2

Respondent moved into the subject premises in April 2010 with a monthly rent of $1200.00. Respondent alleges that the apartment "looked nice" when she moved it, but that the bathroom fixtures and files had not been replaced in years, the kitchen cabinets, counter tops, and appliances also looked more than five years old, and the windows were "old timey". Respondent disputes petitioner's claim that the apartment is exempt from rent regulation, and argues that in order for the landlord to have deregulated the subject premises, he would have had to have spent $47,070.00 in Individual Apartment Improvements. Respondent annexes the DHCR apartment registration history, indicating a rent of $450.00 per month in 2003, and an increase to $1724.85 one year later. The 2004 registration indicates "pref rent vac/leas imprvmt", and the registration in 2005 indicates "high rent vacancy. Exempt." Respondent argues that petitioner improperly increased the rent and deregulated the apartment, and in the alternative to summary judgment, seeks leave of court to conduct discovery from 2003 to the present.

Petitioner opposes the motion, citing In the Matter of Grimm v. DHCR, 15 NY3d 358 (2010), arguing that although the Court of Appeals provides an exception to the four-year "look back" rule, the exception is only triggered if the tenant can clearly establish the landlord's fraudulent deregulation scheme. Petitioner argues that respondent has failed to establish such fraud. Petitioner further relies on the holding of Matter of Boyd v. DHCR, 2014 NY Slip Op 04806 (2014), which reiterated the holding in Grimm, requiring tangible evidence of the landlord's fraud in order to go beyond the four-year statute of limitation. Respondent argues that the premises were not properly deregulated and her request to look beyond the four-year statute of limitation is solely to determine whether the subject premises is subject to rent regulation.

This court acknowledges the Grimm line of cases, which provide an exception to the four-year statutory time period in rent overcharge cases, however, herein respondent seeks to *3 determine whether the premises were properly deregulated. In East West Renovating Co. v. DHCR, 16 AD3d 166 (1st Dept, 2005), the Appellate Division held that "DHCR's consideration of events beyond the four-year period is permissible if done not for the purpose of calculating an overcharge but rather to determine whether an apartment is regulated." (See also, Matter of Hargrove v. DHCR, 244 AD2d 241[1997]; Matter of Condo Units v. DHCR, 4 AD3d 424 [2004]). Additionally, in Gersten v. 56 7th Avenue LLC, 88 AD3d 189 (1st Dept, 2011), the Appellate Division held that tenants should be able to challenge the regulatory status of an apartment at any time throughout their tenancy and that landlords must prove the change in an apartment's status from rent stabilized to unregulated, beyond the four-year statute of limitations. (See also, 49 East 74th Street LLC v. Eric Hunter Slater, 2014 NY Slip Op 50072[U] [2014].)

Summary judgment is a drastic remedy which deprives the litigant of his day in court, and should not be granted where there is any doubt as to the existence of a triable issue of fact. (See Mfrs Trust Co v. Cottrell, 71 AD2d 538, [4th Dept 1979]; Blittner v. Filroben Associates, 183 AD2d 645 [1st Dept 1992]; and Bellefonte Re-Insurance Co v. Volkswagenwerk AG, 102 AD2d 753 [1st Dept 1984]). The court's function is not to determine credibility, but to determine if there is a triable issue, or if arguably there is a genuine issue of fact. (See SJ Capelin Associates, Inc v. Global Mfg. Corp, 34 NY2d 338, 341 [Ct App, 1974] and Color by Pergament, Inc v. Pergament, 241 AD2d 418 [1st Dept 1997]).

Based on the prevailing case law and the facts and circumstances of this case, the Court finds that there are questions of fact regarding petitioner's claim that the apartment was deregulated, which require a trial.

It is well established that discovery may be granted in a holdover proceeding upon a showing of ample need. New York University v. Farkas, 121 Misc2d 643 (Civ Ct, NY County *4 1983). In Farkas, the Court set forth six factors to consider when determining whether ample need is established. The factors include (1) whether the petitioner has asserted facts to establish a cause of action; (2) whether there is a need to discover information directly related to the cause of action; (3) whether the information requested is carefully tailored and is likely to clarify the disputed facts; (4) whether prejudice will result from granting discovery; (5) whether the court can alleviate the prejudice; and (6) whether the court can structure discovery to protect pro se tenants against any adverse effects of a landlord's discovery request.

In this case, respondent has established ample need for discovery. It is petitioner's burden to prove the elements of its prima facie case, including the exemption of this apartment from rent regulation. Although the Court understands that petitioner is the new owner of this building, and may have some difficulty with retrieving information, that fact alone does not release petitioner from its burden of proof in light of the defenses and counterclaims raised by respondent.

Therefore, that portion of respondent's motion seeking discovery, is granted. The matter is marked off the Court's calendar pending completion of discovery.

This constitutes the decision and order of the Court.
Dated: February 5, 2015
Brooklyn, New York