560-568 Audubon Realty Inc. v. Rodriguez, 67846/2016

March 29, 2017

- Civil Court, New York County, Housing Part C
- 67846/2016
- Judge Jack Stoller
- For Plaintiff: For Landlord: Melissa S. Levin, Esq., Horing Welikson & Rosen, PC.
- For Defendant: For Tenant: Matthew J. Chachere, Esq., Northern Manhattan Improvement Corporation Legal Services.

Cite as: 560-568 Audubon Realty Inc. v. Rodriguez, 67846/2016, NYLJ 1202782196377, at *1 (Civ., NY, Decided February 27, 2017)

CASENAME
560-568 Audubon Realty Inc., Petitioner v. Yris Rodriguez, Respondents

Decided: February 27, 2017

ATTORNEYS

Recitation, as required by CPLR §2219(a), of the papers considered In the review of this motion

Papers Numbered
Order To Show Cause and Supplemental Affidavit and Affirmation Annexed 1, 2, 3

Affirmation In Opposition 4
Reply Affirmation 5
DECISION/ORDER

*1

Upon the foregoing cited papers, the Decision and Order on this Motion are as follows:
560-568 Audubon Realty LLC, the petitioner in this proceeding ("Petitioner"), commenced this summary proceeding against Yris Rodriguez, the respondent in this proceeding ("Respondent"), seeking a money judgment and possession of 560 Audubon Avenue #4B, New York, New York ("the subject premises") on the basis of nonpayment of rent. Respondent consented to a final judgment by a stipulation ("the Stipulation").

Respondent now moves to vacate the Stipulation, for leave to interpose an amended answer, for a stay of this proceeding, and to transfer this proceeding to Supreme Court.

The petition in this matter pleads that the subject premises is subject to the Rent Stabilization Law, although Respondent's lease states that the subject premises is not subject to *2 the Rent Stabilization Law.

Respondent's lease states that the monthly rent for the subject premises is $4,280.00 but will only be $1.080.00 if Respondent pays the rent timely.

Respondent, while unrepresented, executed the Stipulation in open Court on July 21, 2016. The Stipulation awarded Petitioner a final judgment in the amount of $5,960.00 and stayed execution of the warrant to enable her to pay the judgment amount. Now that Respondent has retained counsel, she moves to vacate the Stipulation on the ground of rent overcharge.

The record on this motion practice shows that Petitioner registered the subject premises with the New York State Division of Housing and Community Renewal ("DHCR"). The history of registrations ("the registration history") shows that Petitioner registered the subject premises with a rent of $632.08 in 2005 and 2006; $840.00 for a vacancy lease in 2007; $875.00 for a renewal lease in 2008; $1,000.00 for a vacancy lease in 2009; $1,442.20 for a vacancy lease in 2010; $2,678.66 for a vacancy lease in 2011; $3,120.64 for a vacancy lease in 2012; $3.635.55 for a vacancy lease in 2013; and $4,280.74 for a vacancy lease with Respondent in 2014.

If a landlord of a rent-stabilized apartment wished to evade the Rent Stabilization Law, one way to do so would be to register rents higher than otherwise allowed while only charging tenants a lower "preferential" rent so that a tenant would have no incentive to challenge the rent. See 656 Realty, LLC v. Cabrera. 27 Misc.3d 1225(A) n.5 (Civ. Ct. N.Y. Co. 2009), aff'd, 27 Misc.3d 138(A)(App. Term 1st Dept. 2010)(underscoring how a preferential rent could be used as such to evade Rent Stabilization).

This potential for abuse underscores the importance of registering rents a landlord deems "preferential" as well as rents a landlord deems to be a legal regulated rent. 9 N.Y.C.R.R. §2528.3(a)(registration of rents with DHCR "shall…contain[] the *3 current rent)." Leases annexed to the motion practice shows rents that Petitioner characterizes as "preferential" rents of $995.00 from a lease in 2011 and $1,150.00 from a lease in 2012. The registration history does not include these "preferential" rents. A registration at DHCR that does not include preferential rents as such is defective. Compare Jazilek v. Abart Holdings, LLC, 72 A.D.3d 529, 531 (1st Dept. 2010).

In addition to registering "legal regulated rents" much higher than actual, "preferential" rents charged, leases for Respondent and two tenants prior to Respondent, executed between 2011 and 2014, all state that the subject premises that the subject premises had undergone a major

renovation, clearly in advancement of the proposition that the legal rent for the subject premises was $2,678.66, $3,120.64, and $4,280.74, respectively.

In evaluating evidence, the Court should not discard common sense. People v. Garafolo, 44 A.D.2d 86, 88 (2nd Dept. 1974). Common sense and the lessons of human experience should not be strangers to the decision-making process. People v. Jones, 19 Misc.3d 1143(A) (S. Ct. N.Y. Co. 2008). Common sense tells the Court that three renovations of the scale necessary to warrant such rent increases in four years is unlikely enough to raise an issue about its veracity.

In addition to the failure to register preferential rents and the allegation of three renovations in four years, as noted above, Respondent's lease does not render her rent $1,080.00 as a preferential rent as much as a rent she may pay if she pays it timely. The lease provides that Petitioner may collect a rent of $4,280.00 if Respondent paid the rent in an untimely fashion. Such a scheme amounts to an unconscionable late charge and penalty that is excessive and grossly disproportionate to any damages that could be sustained as a result of Respondent's *4
failure to pay rent on time. Diversified Equities, LLC v. Russell, 50 Misc.3d 140(A)(App. Term 2nd Dept. 2016), Park Haven, LLC v. Robinson, 45 Misc.3d 129(A)(App. Term 2nd Dept. 2014).

To the extent that Petitioner did not properly register rent with DHCR as noted above, Petitioner may not collect any rent higher than the rents in effect before Petitioner started increasing the rent with the use of preferential rents or otherwise impermissibly, which goes back to the increase from $632.08 in 2006 to $840.00 in 2007 for a one-year vacancy lease. On a one-year vacancy lease, Petitioner was entitled to a rent increase of twenty percent less the difference between an increase for a one-year and a two-year renewal for the previous lease. 9 N.Y.C.R.R. §2522.8(a)(2). Under N.Y.C. Admin. Code §26-510(b), the Rent Guidelines Board ("RGB") establishes rent adjustments for the units subject to Rent Stabilization. The difference between the

adjustments for a one- and two-year renewal lease for the previous lease was three percent. RGB Order 35. Twenty percent less three percent is seventeen percent. An increase of seventeen percent over the prior rent of $632.08 yields a rent of $739.53, $100 less than the rent Petitioner registered.

Of course, to consider rent increases this far back, the Court must consider increases more than four years prior to the interposition of the rent overcharge defense, which the Court can do if it finds that Petitioner has been engaging in a scheme to avoid coverage of the Rent Stabilization Law. Matter of Grimm v. State of New York Div. of Hous. & Community Renewal Off. of Rent Admin., 15 N.Y.3d 358, 366 (2010), Thornton v. Baron, 5 N.Y.3d 175, 181 (2005). Factors that warrant an investigation regarding the legality of the rent in effect four years prior to the interposition of the claim are: (1) the tenant alleges circumstances that indicate the landlord's *5 violation of the Rent Stabilization Law and Rent Stabilization Code in addition to charging an illegal rent; (2) the evidence indicates a fraudulent scheme to remove the rental unit from rent regulation; and/or (3) the rent registration history is inconsistent with the lease history. Matter of Pehrson v. Division of Hous. & Community Renewal of the State of N.Y., 34 Misc.3d 1220(A)(S. Ct. N.Y. Co. 2011). The use of preferential rents, the suspect citation of multiple renovations, the failure to register preferential rents, and the use of a higher rent as a penalty for late payment all evince indicia warranting an examination of the rent history for more than four years prior to the interposition of the claim.

Petitioner correctly points out that the judgment amount against Respondent is based on the preferential rent and not the higher amount of rent that Petitioner deems to be the legal regulated rent. However, if Petitioner failed to properly and timely comply with rent registration requirements of the Rent Stabilization Code, Petitioner may not collecting any rents in excess of the last amount prior to the last proper registration. 9 N.Y.C.R.R. §2528.4(a), Bradbury v. 342 W. 30th St. Corp., 84 A.D.3d 681, 683-684 (1st Dept. 2011), Ernest & Maryanna

Jeremias Family Partnership, LP. v. Matas, 39 Misc.3d 1206(A)(Civ. Ct. N.Y. Co. 2013). As of this posture of the litigation, Respondent has not proven by, say, the standards of a summary judgment that this is the case. However, the standard the Court applies on a motion by a newly-represented party to vacate a stipulation the party executed while pro se on the basis of rent overcharge is whether the party submits documentary evidence which shows the existence of an arguably meritorious rent overcharge claim. Clermont York Assoc. LLC v. Zgodny, 42 Misc.3d 143(A)(App. Term 1st Dept. 2014).

To be repetitive, the use of preferential rents as Petitioner does here, the failure to *6 register those preferential rents, the claims to implausibly large numbers of renovations in a short time frame, and the use of unconscionable punitive late rent payment penalties show an "arguably meritorious" rent overcharge cause of action.

Accordingly, the Court grants Respondent's motion to vacate the Stipulation and, with it, the judgment and warrant contained therein.

As Respondent has just retained counsel and as the vacatur of the Stipulation restores this proceeding to a trial posture, the Court grants Respondent's motion to amend her answer, Harlem Restoration Project v. Alexander, N.Y.L.J. July 5, 1995 at 27:2 (Civ. Ct. N.Y. Co.), and deems the answer annexed as Exhibit 4 to Respondent's motion to be her new amended answer.

Respondent moves to have this Court transfer this matter to Supreme Court, where there is a pending lawsuit by several tenants of the building in which Respondent against Petitioner. As this proceeding and the other action are pending in different Courts, CPLR §602(b) applies. CPLR §602(b) permits "the supreme court" or "the county court" to "remove to itself an action pending in a city, municipal, district or justice court in the county and consolidate it or have it tried together with that in the county court." New York City Civil Court is not "the supreme court," nor is it a "county court." Arvelo by Arvelo v. City of New York, 182

Misc.2d 101, 104 (Civ. Ct. N.Y. Co. 1999). Respondent does not otherwise cite statutory (or other) authority giving the Housing Court the jurisdiction to remove from itself cases to Supreme Court. New York City Civil Court Act §110(b) empowers the Housing Court to consolidate cases, but by its text, the statute only applies to proceedings "pending in *such part*…." (emphasis added), meaning the Housing Part of the Civil Court of the City of New York.

The cases are not directly on point, *7 but an instructive example of the limitations on the Civil Court to remove and consolidate cases pending in other courts is found in In re Daniel, 181 Misc.2d 941, 955 (Civ. Ct. Bronx Co. 1999), Mallardi v. District Council 37 Health & Sec. Plan Trust, 128 Misc.2d 696, 699 (Civ. Ct. Kings Co. 1985)(the Civil Court, unlike the Supreme Court, lacks the power to remove and consolidate an action pending in the Supreme Court with an action pending in the Civil Court).

Accordingly, the Court denies Respondent's motion to order this proceeding removed with an action pending in Supreme Court, without prejudice to Respondent's remedies in Supreme Court.

Respondent also moves for a stay of this proceeding pending the outcome of the action in Supreme Court. However, Civil Court is the preferred forum for landlord-tenant disputes. Langotsky v. 537 Greenwich LLC, 45 A.D.3d 405 (1st Dept. 2007). Only where Civil Court is without authority to grant the relief sought should the prosecution of a summary proceeding be stayed. Scheff v. 230 E. 73rd Owners Corp., 203 A.D.2d 151, 152 (1st Dept. 1994). The Housing Court has jurisdiction, even if it is concurrent jurisdiction, to adjudicate a cause of action sounding in rent overcharge. Lirakis v. 180 Seventh Ave. Assoc. LLC, 10 Misc.3d 131(A) (App. Term 1st Dept. 2005). Vazquez v. Sichel, 12 Misc.3d 604, 605 (Civ. Ct. N.Y. Co. 2005).

Accordingly, the Court may hear Respondent's rent overcharge defense in this Court and the Court denies Respondent's motion to stay this

proceeding, without prejudice to relief that Respondent may seek in Supreme Court.

This matter is now in a trial-ready posture. The Court calendars the matter for trial on April 3, 2017 at 9:30 a.m. in part C, Room 844 of the Courthouse located at 111 Centre Street, *8 New York, New York.

This constitutes the decision and order of this Court.
Dated: New York, New York
February 27, 2017