2019-11-18

CRP 88 E. 111th St. LLC v. Guamarrigra

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2019 NY Slip Op 29347

Decided on November 18, 2019

Civil Court Of The City Of New York, New York County

Stoller, J.

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Decided on November 18, 2019

Civil Court of the City of New York, New York County

CRP 88 EAST 111th Street LLC, Petitioner,

against

Viki Vizcho Guamarrigra, Respondent.

L & T 61871/2017

Jack Stoller, J.

Papers Numbered

Respondent's Order to Show Cause and Supplemental Affirmation 1, 2

Affirmation in Opposition to the Order to Show Cause 3,

Reply Affirmation in Further Support to the Order to Show Cause 4

Upon the forgoing cited papers, the Decision and Order on this Motion and Trial are as follows:

CRP 88 East 111th Street LLC, the Petitioner in this proceeding ("Petitioner"), commenced this holdover proceeding against Viki Vizcho Guamarrigra ("Respondent"), a respondent in the proceeding, and "Jane Doe" ("Co-Respondent"), another respondent in this proceeding (collectively, "Respondents"), seeking possession of 1814 Broadway, Suite 400, New York, New York, ("the subject premises"), on the grounds that Respondent refused an offer of a lease renewal. Respondent interposed an answer dated May 16, 2017, with a number of defenses, with an emphasis on Respondent's claim seeking damages resulting from a rent overcharge, including treble damages. The Court held a trial of this matter on June 17, 2019 and then adjourned the matter for post-trial submissions to July 30, 2019. Subsequent to the submissions of the Post-Trial Memorandums, Respondent moved by order to show cause to stay this Court from rendering a decision and to grant Respondent the opportunity to supplement the trial record with a Division of Housing and Community Renewal ("DHCR") response to a Freedom of Information Act ("FOIA") request. On September 26, 2019, the Court granted both parties the opportunity to brief the recently-decided Appellate Division case, *Dugan v. London Terrace*, 177 AD3d 1 (1st Dept. 2019) and adjourned the matter to October 31, 2019 for submission.

Order to Show Cause

Respondent requests that this Court reopen the trial record to submit a DHCR order dated October 3, 2016 denying a Major Capital Improvement ("MCI") Rent Increase on the basis that the Petitioner withdrew its application for an MCI.

Trial courts have the power to permit a litigant to reopen a case under appropriate [*2]circumstances, *Lieberman-Massoni v. Massoni*, 146 AD3d 869, 869 (2nd Dept. 2017), although a trial court's discretion to reopen a case after a party has rested should be "sparingly exercised." *LaSalle Bank Nat'l Ass'n v. Nomura Asset Capital Corp.*, 72 AD3d 409, 412 (1st Dept. 2010). "When a motion to reopen is made, the trial court should consider whether the movant has provided a sufficient offer of proof, whether the opposing party is prejudiced, and whether significant delay in the trial will result if the motion is granted." *Sweet v Rios*, 113 AD3d 750, 752 (2014).

This standard presents challenges to Respondent's motion. Respondent made its FOIA request to DHCR two weeks before the trial. Given that this proceeding was commenced in 2017, Respondent had more than ample time to make the necessary arrangements to obtain orders from DHCR. Furthermore, at no time during the trial did Petitioner attribute the rent increase to an MCI, achieves

the same end as Respondents' proposed evidence. Submission of the DHCR order under these circumstances sustains little, if any, effect on the Court's decision other than a further delay of this proceeding. Accordingly, the Court denies Respondent's Order to Show Cause.

Trial

The parties stipulated that Petitioner is the proper party to commence the proceeding; that Petitioner and Repsondent are in a landlord/tenant relationship with one another; that the predicate notice was timely served; that the subject premises is subject to the Rent Stabilization Law; that Petitioner has complied with the registration requirements of MDL §325; and that Respondent did not execute the lease offer commencing in June 2016.

Respondent introduced into evidence a history of registrations of the subject premises filed with DHCR pursuant to 9 N.Y.C.R.R. §2528.3 ("the registration history"). The registration history shows a legal regulated rent ("LRR") as of June 24, 2002 was of $455.01 and that a one-year vacancy lease commencing on November 11, 2002 with a LRR of $1,500 followed. As noted above, Petitioner offered no proof of any improvement, be it an MCI or an individual apartment improvement ("IAI"), that might justify the rent increase from $455.01 to $1,500.00. The registration history shows that a two-year renewal lease commencing on May 20, 2003 with a LRR of $1,500 followed; that a two-year renewal lease commencing on May 20, 2005 with a LRR of $1,500 followed; that a two-year renewal lease commencing on May 20, 2007 with a LRR of $1,608.75 and a preferential rent of $1,500.00 followed; that a two-year renewal lease commencing on May 20, 2009 with a LRR of $1,745.49 and a preferential rent of $1,627.50 followed; that a one-year renewal lease commencing on June 1, 2011 with a LRR of $1,784.76 and a preferential rent of $1,627.50 followed; that a one-year renewal lease commencing on June 1, 2012 with a LRR of $1,851.69 and a preferential rent of $1,627.50 followed; that a one-year renewal lease commencing on June 1, 2013 with a LRR of $1,888.72 followed; and that a two-year renewal lease commencing on June 1, 2014 with a LRR of $2,035.09 followed.

Discussion

Petitioner cites CPLR §213-a in support of its argument that the statute of limitations bars Respondent's claim of overcharge. However, the New York State Legislature amended CPLR §213-a

on June 14, 2019, by the Housing Stability and Tenant Protection Act of 2019 ("HSTPA"). The legislature passed HSTPA while this proceeding was pending. The legislation directed that the statutory amendments regarding overcharge "shall take effect immediately and [*3]shall apply to any claims pending or filed on or after such date." HSTPA, § 1, Part F, §7. *Dugan, supra*, 177 AD3d at 8. Although Respondent interposed rent overcharge defenses and counterclaims in an answer before the effective date, the Court had not entered a final judgment as of the effective date, which renders his overcharge claim "pending" as of the effective date. *US Bank Nat'l Ass'n v. Saintus*, 153 AD3d 1380, 1382 (2nd Dept. 2017), *Cooke-Garrett v. Hoque*, 109 AD3d 457 (2nd Dept. 2013), *Knapek v. MV Sw. Cape*, 110 AD2d 928, 929 (3rd Dept. 1985), *In re Bailey*, 265 A.D. 758, 761 (1st Dept. 1943). *Cf. 400 E58 Owner LLC v. Hernson*, 2019 N.Y.L.J. LEXIS 3091 (Civ. Ct. NY Co.), *315 Jefferson LLC v. Dominguez*, 2019 NY Slip Op. 29255 (Civ. Ct. Kings Co.)(rent overcharge claim was not "pending" as of the effective date when the Court dismissed the claims before the effective date).

CPLR §213-a, as amended by the HSTPA, now expands the statute of limitations on overcharge claims from four years to six years. 2019 McKinney's Session Law News of NY, Ch. 36 at Part F, § 6 (June 2019). In addition, and most relevant to the case in point, HSTPA expands examination of the rental history and determination of rent overcharges and legal regulated rents, by stating, "the courts, in investigating complaints of overcharge and in determining legal regulated rents, *shall consider all available rent history which is reasonably necessary to make such determinations*." *Id*. (emphasis added), *Dugan*, supra, 177 AD3d at 9; *699 Venture Corp. v. Zuniga*, 64 Misc 3d 847, 853 (Civ Ct. Bronx Co. 2019). "Gone is the temporal limitation on the rental history that can be examined to determine whether an overcharge based on registered rent . . . has occurred." *Id*.

In its review of CPLR §213-a, the Court must presume that each word used in a statute expresses a distinct and different idea, *Matter of Tonis v. Board of Regents of Univ. of State of NY*, 295 NY 286, 293 (1946), and that the legislature inserted every provision of a statute for some useful purpose. *McGowan v. Mayor of City of NY*, 53 NY2d 86, 95 (1981); *Matter of Albano v. Kirby*, 36 NY2d 526, 530 (1975). Conversely, the Court cannot conclude that the legislature deliberately placed a phrase in the statute which was intended to serve no purpose. *Matter of Rodriguez v. Perales*, 86 NY2d 361, 366 (1995); *Matter of Smathers*, 309 NY 487, 495 (1956); *People v. Dethloff*, 283 NY 309, 315 (1940); *See Also Matter of New York County Lawyers' Assn. v. Bloomberg*, 95 AD3d 92, 101, 940 NYS2d 229 (1st Dept 2012) (courts must avoid a construction rendering statutory language to be superfluous). Canons of statutory construction compel the finding that words like "all" and "shall" allots this Court broad review and/or application power. Accordingly, the amended CPLR §213-a instructs this court "to look back as far as necessary to find the most reliable rent registration

upon which to base its determination regarding an overcharge claim", which in this current context means reviewing the disputed increase in rent from 2002. *See Dugan*, 177 AD3d at 8-9; *699 Venture Corp.*, *supra*, 64 Misc 3d at 853.

Here, the rent registration history shows an increase of more than 300% in 2002, obviously in excess of permissible increases in effect at the time. *See* 9 N.Y.C.R.R. §2522.8(a)(1). Had Petitioner followed the respective legal increases promulgated by the Rent Guidelines Board, pursuant to N.Y.C. Admin. Code §26-511(c)(5-a) and 9 N.Y.C.R.R. §2522.8(a)(2), the rent for the subject premises would have increased as follows: a LRR of $536.91 in 2002 reflecting a 20% one-year vacancy increase less the difference between a 4% two-year renewal and a 2% one-year renewal lease; $644.29 in 2003 reflecting a 20% two-year [*4]vacancy increase; $686.17 in 2005 reflecting a 6.5% two-year lease renewal increase; $735.92 in 2007 reflecting a 7.25% two-year lease renewal increase; $798.47 in 2009 reflecting an 8.5% two-year lease renewal increase; $816.44 in 2011 reflecting a 2.25% one-year lease renewal increase; $847.06 in 2012 reflecting 3.75% one-year lease renewal increase; $867.06 in 2013 reflecting $20 increase for a one-year lease renewal; and $934.26 in 2014 reflecting a 7.75% two-year renewal increase.

The renewal lease that Petitioner offered Respondent predicated rent increases on a baseline well in excess of the permissible legal rent of $934.26. A tenant does not have to execute a lease if the renewal lease offer was not proper. *Haberman v. Neumann and Broderick*, N.Y.L.J. Jan. 28, 2003 at 18:2 (App. Term 1st Dept.)(renewal notice not in the form prescribed by DHCR); *KSB Broadway Assocs., LLC v. Sanders*, 191 Misc 2d 651, 652 (App. Term 1st Dept. 2002), *leave to appeal denied*, 2003 NY App. Div. LEXIS 6042 (1st Dept. 2003)(lease renewal not made prospectively as required); *Mitchell Place Inc. v. Capetillo*, N.Y.L.J. May 30, 2001 at 20:1 (App. Term 2nd Dept.)(errors in the rent on a renewal lease); *East 122 Realty LLC v. Perez*, 23 Misc 3d 1131(A)(Civ. Ct. NY Co. 2009) (unlawful rent); *First Lenox Terrace Assoc. v. Hill*, 13 Misc 3d 488, 491 (Civ. Ct. NY Co. 2006) (improper offer of two renewal leases separating rent from parking charges); *Fishbein v. Mackay*, 36 Misc 3d 1228(A)(Civ. Ct. NY Co. 2012)(lease renewal which is not offered on the same terms and conditions as the expiring lease). Accordingly, Petitioner has not proven its cause of action and the Court dismisses Petitioner's cause of action for possession against Respondents, without prejudice to renewal if Petitioner makes a proper lease renewal offer that Respondent wrongfully declines to sign.

Respondent counterclaimed for overcharge damages, including treble damages, accruing in the immediate two years before his verified answer, which covers the time period from May of 2015 through May of 2017. As stated above, the LRR at that time should have been $934.26. The evidence

shows that, from May of 2015 through May of 2017, Respondent made 23 monthly rent payments of $1,753.63, a monthly overcharge of $819.37. At a rate of $819.37 for 23 months, the aggregate overcharge Petitioner collected was $18,845.51. The Court shall award treble damages for this overcharge. 9 N.Y.C.R.R. §2526.1(a)(2)(i). Three times $18,845.51 is $56,536.53.

Accordingly, the Court grants Respondent's counterclaim. The Court awards Respondent a final judgment in the amount of $56,536.53 against Petitioner. This judgment amount shall be without prejudice to Petitioner's potential cause of action for any unpaid use and occupancy and/or rent.

The parties are directed to pick up their exhibits within thirty days or they will either be sent to the parties or destroyed at the Court's discretion in compliance with DRP-185.

This constitutes the decision and order of this Court.

New York, New York
November 18, 2019

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HON. JACK STOLLER

J.H.C.

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