Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

All Decisions

Housing Court Decisions Project

2019-07-01

699 Venture Corp v. Zuniga

Follow this and additional works at: https://ir.lawnet.fordham.edu/housing_court_all

Recommended Citation

"699 Venture Corp v. Zuniga" (2019). *All Decisions*. 62.
https://ir.lawnet.fordham.edu/housing_court_all/62

This Housing Court Decision is brought to you for free and open access by the Housing Court Decisions Project at FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in All Decisions by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

699 Venture Corp. v Zuniga
2019 NY Slip Op 29200 [64 Misc 3d 847]
July 1, 2019
Bacdayan, J.
Civil Court of the City of New York, Bronx County
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
As corrected through Wednesday, September 11, 2019

[*1]

699 Venture Corp., Petitioner,
v
Domitila Zuniga, Respondent.

Civil Court of the City of New York, Bronx County, July 1, 2019

APPEARANCES OF COUNSEL

The Legal Aid Society for respondent.

Lazarus, Karp & Kalamotousakis LLP for petitioner.

{**64 Misc 3d at 848} OPINION OF THE COURT

Karen May Bacdayan, J.

The decision and order on this motion is as follows:

Background and Facts

This is a nonpayment proceeding brought against Domitila Zuniga (respondent), a rent-stabilized tenant, by 699 Venture Corp. (petitioner). Petitioner alleges that respondent is in possession of the premises pursuant to an agreement to pay $1,471.92 per month, and that through the date of the petition she owed $4,415.52. Respondent first took occupancy of the [*2]subject premises on August 1, 2007, pursuant to a one-year written lease for $1,150. (Respondent's aff at 4; respondent's exhibit D.) A higher legal regulated rent of $1,620.64 is also registered for the same period, although not reflected on the face of the lease or in any rider. (Respondent's exhibit B.) Respondent answered pro se alleging that there "are or were {**64 Misc 3d at 849}conditions in the

apartment . . . which the Petitioner did not repair," and that the rent, or part of the rent, had been paid. (Respondent's exhibit A.) The Legal Aid Society appeared on behalf of respondent on April 26, 2019, and this motion ensued.

Respondent moves pursuant to CPLR 3025 for leave to serve an amended answer to the proceeding. Respondent also moves for discovery pursuant to CPLR 408. Specifically, respondent seeks to discover (1) names of tenants since 1996 who resided in the apartment prior to respondent and those tenants' leases, (2) all documents from 1996 to present demonstrating how the rent was calculated, (3) all registration documents from 1996 to present, (4) documents related to improvements, renovations, or repairs from 1996 to present, and (5) all leases between respondent and petitioner and any attachments or riders thereto.

The documents attached to respondent's motion show that the rent registered with the Division of Housing and Community Renewal (DHCR) in 1996, one year after petitioner purchased the building, was $419.96. In 1997, the apartment was registered with DHCR as "VA" (vacant) at a legal regulated rental amount of $600, a 43% increase. No other explanation is given for this significant increase in rent. In 1998, the apartment was registered at a legal regulated rent of $569.10, an unexplained 5% decrease in rent. In 1999 the apartment was registered at a legal regulated rent of $759, a 26% increase over the 1997 registered rent of $600 and a 33% increase over the 1998 registered rent of $569.10. The reason for the increase in 1999 was listed as "VAC/LEASE — IMPRVMNT." (Respondent's exhibit B.) For five years, no preferential rents were registered. Then, beginning in 2003, petitioner began registering both preferential rents and higher legal regulated rents. When respondent took occupancy, her preferential rent of $1,150 was registered with DHCR, and a higher legal regulated rent of $1,620.64 was also registered.

Arguments

Respondent moves for leave to serve an amended answer on the basis that she has now retained counsel and inadvertently waived a potentially meritorious defense of rent overcharge. Respondent also seeks to interpose counterclaims based on rent overcharge, breach of the warranty of habitability, and harassment, as well as a claim for attorneys' fees. She argues that leave must be granted to interpose an amended answer as{**64 Misc 3d at 850}she will be greatly prejudiced if not allowed to defend against petitioner's claims with the full benefit of counsel.

With regard to her motion for leave to conduct discovery, respondent argues that she has shown ample need for this court to grant leave for discovery beyond the statute of limitations [*3]that was in

effect when her claim was interposed.[FN1] (CPLR 213-a; Rent Stabilization Law of 1969 [Administrative Code of City of NY] § 26-516 [a] [2].)[FN2] Respondent further argues that she is entitled to discovery because of the unexplained increases registered for this apartment in 1997 and 1999. (Affirmation of respondent's counsel at 49.) Prejudice is limited, respondent argues, because the documents necessary to show whether these increases are lawful are in the petitioner's sole custody as petitioner has owned the building since 1995. (Affirmation of respondent's counsel at 42.) Respondent argues that these unexplained increases, taken together with other "irregularities and discrepancies," are sufficient to constitute a "colorable claim of a fraudulent scheme to deregulate [the apartment]." (Affirmation of respondent's counsel at 57.)

Petitioner opposes respondent's motion to serve an amended answer on the basis that it does not materially differ from the pro se answer. Petitioner also argues that respondent's claim of overcharge is devoid of merit as it falls outside the statute of limitations for such claims. Regarding respondent's motion for{**64 Misc 3d at 851} leave to conduct discovery, petitioner argues that respondent has not produced "real and substantial evidence of fraud" sufficient to reach beyond the statute of limitations. (Affirmation of petitioner's counsel at 13.) While not specifically arguing prejudice, petitioner states that "[t]he only 'evidence' respondent proffers is that petitioner raised the rent ***over two decades ago!***" (Affirmation of petitioner's counsel at 12.)

Oral argument was held on June 3, 2019, and decision was reserved. In the interim, the Housing Stability and Tenant Protection Act of 2019 which amends key sections of the rent stabilization statutes was passed into law. (L 2019, ch 36, § 1, part F [June 2019].) The Act "take[s] effect immediately and shall apply to any claims pending or filed." (*Id.* § 7.) Neither party has requested leave to file additional briefs based on the passage of this new law.

Discussion

Motion for Leave to Allow Respondent to Interpose an Amended Answer

[1] Petitioner's argument that respondent's overcharge claim is devoid of merit as it falls [*4]outside of the statute of limitations founders on the amended CPLR 213-a which now states that "an overcharge claim may be filed *at any time*." (L 2019, ch 36, § 1, part F, § 6 [June 2019] [emphasis added].) Moreover, nowhere in its opposition does petitioner claim surprise or prejudice would result from the interposition of the proposed amended answer. It is axiomatic that leave to amend pleadings "shall be freely given" absent a showing of prejudice or surprise resulting directly from moving party's delay. (CPLR 3025 [b]; *McCaskey, Davies & Assoc. v New York City Health &*

Hosps. Corp., 59 NY2d 755, 757 [1983]; *Fahey v County of Ontario*, 44 NY2d 934, 935 [1978].) Petitioner does not address or oppose any of respondent's other proposed amendments.

Respondent should be afforded the opportunity to litigate this proceeding with the full benefit of counsel, and to do so her motion to interpose the amended answer must be granted. (CPLR 3025 [b]; *Fahey v County of Ontario*, 44 NY2d 934 [1978]; *Harlem Restoration Project v Alexander*, NYLJ, July 5, 1995 at 27, 1995 NY Misc LEXIS 783 [Civ Ct, NY County 1995].)

Motion for Leave to Conduct Disclosure Pursuant to CPLR 408

In determining whether a party has established ample need for discovery, courts have considered a number of factors, not{**64 Misc 3d at 852} all of which need be present in every case, including: (1) whether the movant has asserted facts to establish a claim or defense; (2) whether there is a need to determine information directly related to the claim or defense; (3) whether the requested disclosure is carefully tailored and likely to clarify the disputed facts; (4) whether prejudice will result from granting leave to conduct discovery; and (5) whether any prejudice caused by granting a discovery request can be diminished by an order fashioned by the court for that purpose. (*New York Univ. v Farkas*, 121 Misc 2d 643, 647 [Civ Ct, NY County 1983].)

As previously noted, on June 14, 2019, while this motion was pending, the legislature passed the Housing Stability and Tenant Protection Act of 2019. CPLR 213-a was amended to extend the statute of limitations on overcharge claims to six years from four years, and allows that "the calculation and determination of the legal rent and the amount of the overcharge shall be made in accordance with the provisions of law governing the determination and calculation of overcharges." (L 2019, ch 36, § 1, part F, § 6 [June 2019].) The Act also enacted sweeping changes to the provisions of law regarding examination of the rental history and determination of rent overcharges and legal regulated rents, e.g., "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*." (Administrative Code § 26-516 [h], as amended by L 2019, ch 36, § 1, part F, § 5 [June 2019] [emphasis added].) As a result, the amendments have abrogated much of the decisional authority that evolved around the prior law.

Formerly, a tenant was required to demonstrate a colorable claim of a fraudulent scheme to deregulate the apartment that would warrant granting discovery beyond the statute of limitations. (*Conason v Megan Holding, LLC*, 25 NY3d 1 [2015]; *Matter of Grimm v State of N.Y. Div. of Hous. & Community Renewal Off. of Rent Admin.*, 15 NY3d 358 [2010]; *Thornton v Baron*, 5 NY3d 175

[2005]; [Spatz v Valle, 63 Misc 3d 134][A], 2019 NY Slip Op 50452[U] [App Term, 1st Dept 2019].) Previously, a significant increase in rent alone was insufficient indicia of such a fraudulent scheme. ([Matter of Boyd v New York State Div. of Hous. & Community Renewal, 23 NY3d 999] [2014].)

[*5]

However, the new Act profoundly alters the scope of what tenants may seek from a landlord through discovery to prove{**64 Misc 3d at 853} overcharge claims and to set legal regulated rents. The altogether new language states, in relevant part:

> "The division of housing and community renewal, and 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*, including but not limited to (i) *any rent registration or other records* filed with the state division of housing and community renewal, or any other state, municipal or federal agency, *regardless of the date to which the information on such registration refers*; (ii) any order issued by any state, municipal or federal agency; (iii) any records maintained by the owner or tenants; and (iv) any public record kept in the regular course of business by any state, municipal or federal agency. *Nothing contained in this paragraph shall limit the examination of rent history relevant to a determination as to:*
>
> "*(i) whether the legality of a rental amount charged or registered is reliable in light of all available evidence including, but not limited to, whether an unexplained increase in the registered or lease rents, or a fraudulent scheme to destabilize the housing accommodation, rendered such rent or registration unreliable . . . .*" (Administrative Code § 26-516 [h], as amended by L 2019, ch 36, § 1, part F, § 5 [June 2019] [emphasis added].)

The new law transfigures the analysis of what is discoverable in the context of litigating and determining an overcharge claim. Gone is the precept that a significant increase in rent alone is insufficient to warrant examination of rent history beyond the statute of limitations. (*See Boyd*, 23 NY3d 999.) Now, nothing limits the examination of rent history relevant to determining whether an overcharge has occurred based on a modest "unexplained" increase "render[ing] such rent or registration unreliable . . . ." (Administrative Code § 26-516 [h] [i], as amended by L 2019, ch 36, § 1, part F, § 5 [June 2019].) Gone is the requirement that sufficient indicia of fraud must be established for a court to grant discovery beyond the statute of limitations. (*See Grimm*, 15 NY3d 358; *Thornton*, 5 NY3d 175.) Now, a landlord's purported fraudulent scheme to deregulate an apartment is simply a factor that *may* be established *in the alternative* to an unexplained increase which{**64 Misc 3d at 854} alone renders the registered rent unreliable. (Administrative Code § 26-

516 [a], [g], [h], as amended by L 2019, ch 36, § 1, part F, §§ 4-5 [June 2019].) Gone is the temporal limitation on the rental history that can be examined to determine whether an overcharge based on a registered rent made unreliable by an unexplained increase has occurred. Now, a court must search the entire rent history, "regardless of the date to which the information on such registration refers," for the "most recent reliable annual registration statement filed and served upon the tenant six or more years prior to the most recent registration statement." (*Id.*) When read together, the amendments to CPLR 213-a and RSL § 26-516 clarify and reinforce one another and instruct a 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.

[2] Here, respondent examined the rent registration history filed with DHCR and discovered a 43% increase in rent registered in 1997 which petitioner attributes solely to a vacancy of the [*6]apartment. It cannot be controverted that a 43% increase based only on a vacancy between tenants was an inexplicable unlawful increase in 1997. The allowable Rent Guidelines Board order vacancy increase in effect at the time was 14% for a one-year lease and 16% for a two-year lease. (NY City Rent Guidelines Board Order No. 28 [June 24, 1996].) Discovery is necessary and relevant to the determination of whether the legality of this unexplained increase rendered such rent or registration unreliable.

The most recent reliable annual registration is that from 1996, the year before the 43% unexplained increase was registered. Because all subsequent leases, registrations, and increases are based on this unexplained increase and the unreliable 1997 registration, the court finds that production of all documents requested by respondent in her proposed document demand is reasonably necessary to investigate respondent's overcharge claim and determine the legal regulated rent.

Notwithstanding the factors set forth in *Farkas*, the language of the Act in and of itself justifies the discovery sought by respondent. Respondent has demonstrated ample need for disclosure reaching back to 1996 because she has identified and asserted facts, i.e., an unexplained increase in rent resulting in an unreliable registration, to establish a claim for overcharge. Additional information is necessary and directly related to this claim and defense, and respondent's request is{**64 Misc 3d at 855} tailored to the language of the Act. Petitioner correctly points out that 23 years is a long time; nevertheless, the court finds that the plain words of the new law require it to grant the requested discovery. Supporting this reading of the statute is the new language that owners who do not maintain records from more than six years ago do so at their own peril. (Administrative Code § 26-

516 [g], [h], as amended by L 2019, ch 36, § 1, part F, § 5 [June 2019].) If prejudice yet remains a factor, it is limited in this case by the fact that petitioner has been the sole owner of the building since 1995.

Conclusion

For the foregoing reasons, it is hereby ordered that respondent's motion for leave to interpose an amended answer is granted to the extent of deeming the annexed proposed amended answer timely served and filed nunc pro tunc; ordered that respondent's motion for leave to conduct disclosure is granted in its entirety and the parties shall conduct discovery pursuant to article 31 of the CPLR; ordered that this proceeding is marked off-calendar for completion of discovery.

Within a reasonable period after completion of discovery, either party may move to restore this proceeding to the court's calendar on notice of motion.

Footnotes

Footnote 1: The statute of limitations in effect at the time respondent's motion was submitted to the court was four years. However, CPLR 213-a has since been amended by the Housing Stability and Tenant Protection Act of 2019 (Act). As amended, it now states:

> "No overcharge penalties or damages may be awarded for a period more than six years before the action is commenced or complaint is filed, however, an overcharge claim may be filed at any time, and the calculation and determination of the legal rent and the amount of the overcharge shall be made in accordance with the provisions of law governing the determination and calculation of overcharges." (CPLR 213-a, as amended by L 2019, ch 36, § 1, part F, § 6 [June 2019].)

Footnote 2: Section 26-516 of the Rent Stabilization Law (RSL), as amended by the Act and relevant to CPLR 213-a, states:

> "[T]he legal regulated rent for purposes of determining an overcharge, shall be the rent indicated in the most recent reliable annual registration statement filed and served upon the tenant six or more years prior to the most recent registration statement . . . . [I]n investigating complaints of overcharge and in determining legal regulated rent, [a court] shall consider all available rent history which is reasonably necessary to make such determinations." (Administrative Code § 26-516 [a] [i]; [h], as amended by L 2019, ch 36, § 1, part F, §§ 4-5 [June 2019].)