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560-568 AUDUBON TENANTS ASSOCIATION v. 560-568 AUDUBON REALTY, LLC

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BARBARA JAFFE

PART

IAS MOTION 12EFM

Justice

-----X

560-568 AUDUBON TENANTS ASSOCIATION, *et al.*,

Plaintiffs,

- v -

560-568 AUDUBON REALTY, LLC, *et al.*,

Defendants.

-----X

INDEX NO.

154661/2016

MOTION DATE

MOTION SEQ. NO.

006

**AMENDED SOLELY FOR
PUBLICATION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 171-187 were read on this motion for _____ renewal _____.

Plaintiffs move pursuant to CPLR 2221(e) for renewal of their opposition to defendants' motion to dismiss their action for rent overcharges, for vacatur of the October 1, 2018 judgment, and to restore the action to the calendar for a conference to address the completion of discovery. Defendants oppose.

I. PROCEDURAL BACKGROUND

By decision and order dated September 13, 2018, defendants' motion to dismiss the complaint pursuant to CPLR 3211(a)(2) and (7) was granted on the ground, *inter alia*, that, notwithstanding the court's concurrent jurisdiction with the New York State Division of Housing and Community Renewal (DHCR) on issues relating to rent regulation, "the issues raised in this proceeding are particularly suited to resolution by DHCR, which has expertise in these matters." (NYSCEF 173). Thereafter, on October 4, 2018, plaintiff filed a notice of appeal of the September 13 decision which presently pends; they did not file their claims with the DHCR. Then, effective June 11, 2019, the New York State Legislature passed the Housing Stability and Tenant Protection Act of 2019 (the Act). (NYSCEF 174).

II. PLAINTIFFS' CONTENTIONS (NYSCEF 178)

Plaintiffs rely on provisions of the Act that they allege (1) afford tenants the choice of forum for rent overcharge claims (*id.*, at 11, Part F, § 3), and (2) make the Act immediately effective and applicable to any pending claims (*id.*, at 15, Part F, § 7). They thus maintain that as their claims pend on appeal, the Act applies to their action and their claims must be heard in this court, their chosen forum.

III. DEFENDANTS' CONTENTIONS (NYSCEF 183)

Defendants argue that given the dismissal of plaintiffs' action, the matter is "closed" and over unless and until it is "revived" by the Appellate Division. Thus, plaintiffs' motion to renew is alleged to be untimely. They also deny that the action is pending for purposes of the Act as it was dismissed nine months ago and, having filed no rent overcharge claims with the DHCR, plaintiffs' claims do not pend there either. They also observe that their motion for attorney fees was denied on the ground that the action no longer pended here, after judgment was entered on the dismissal. Defendants moreover claim that the Act does not change the prior determination as tenants have always had the choice of forum.

IV. PLAINTIFFS' REPLY (NYSCEF 184)

In their reply, submitted on the return date of the motion, plaintiffs deny that the action is over, as their claims pend at the Appellate Division and no final judgment has yet been rendered. They distinguish defendants' motion for attorney fees from a motion to renew.

Plaintiffs argue that the principles of statutory construction require that the phrase "subject to the tenant's choice of forum" be construed according to its plain meaning, namely, that overcharge claims are to be heard exclusively in the tenant's chosen forum, and that the Act "eliminates the doctrine of 'primary jurisdiction' in rent overcharge cases."

V. ANALYSIS

Absent any claim of a need to address the arguments advanced by plaintiffs in their reply memorandum, defendants do not demonstrate any prejudice that may result from consideration of plaintiffs' reply. Thus, as a matter of discretion, the reply is considered.

A motion to renew pursuant to CPLR 2221(e) may be granted where the movant demonstrates that "there has been a change in the law that would change the prior determination."

A. Does plaintiffs' case pend for purposes of determining if the motion to renew is timely?

A motion to renew based on a change in the law is untimely if advanced "after the case has gone to final judgment, with the appeal time having expired." (David D. Siegal and Patrick M. Connors, *New York Practice* § 254 [6th ed 2018]).

As it is undisputed that plaintiffs' time to appeal the September 13 decision has not expired, their motion to renew is timely. The timeliness of defendants' motion for attorney fees is irrelevant.

B. Does plaintiffs' case pend for purposes of determining whether plaintiffs are entitled to protection under the Act?

Pursuant to Part F, § 7, the Act "shall take effect immediately and shall apply to any claims pending or filed on and after such date."

In *Matter of Pechock v NYS DHCR*, the Court construed a provision in the then-newly enacted Rent Regulation Reform Act of 1997, which applied to "any action or proceeding pending in any court' at the time of its enactment," and found that "pending in any court" included a case then on appeal. (253 AD2d 655 [1st Dept 1998]). As the statute in issue there specifically provided that it applied to any action pending "in any court," whereas here, the Act applies solely to any pending claims, *Matter of Pechock* is not on point.

As plaintiffs' claims remain unresolved until the appeal of the September 13 decision is decided, they are pending.

C. Does the Act prohibit the dismissal of an action in favor of rent overcharge claims being brought before DHCR?

Pursuant to Part F, § 1, “[t]he courts and [DHCR] shall have concurrent jurisdiction subject to the tenant’s choice of forum.”

This provision not only overrules case law holding that DHCR has primary jurisdiction over rent overcharge claims (*see e.g., Olsen v Stellar W. 110, LLC*, 96 AD3d 440, 441-442 [1st Dept 2012]), but it affords tenants their choice of forum. Consequently, as plaintiffs have chosen to have their rent overcharge claims brought in this court, their action may not be dismissed in favor of the claims being heard by DHCR.

VI. CONCLUSION

As plaintiffs sufficiently demonstrate that Part F, § 1 of the Act effects “a change in the law that would change the prior determination,” it is hereby

ORDERED, that plaintiffs’ motion for renewal is granted; it is further

ORDERED, that defendants’ June 27, 2017 motion to dismiss plaintiffs’ rent overcharge claims is denied; it is further

ORDERED, that the October 1, 2018 judgment in this action is vacated; it is further

ORDERED, that the case is restored to the calendar for a scheduling conference to coordinate the completion of discovery; and it is further

ORDERED, that the parties appear for a compliance conference in room 341 at 60 Centre Street on Wednesday, November 13, 2019 at 2:15 pm.

9/12/2019

<u>DATE</u>							<u>BARBARA JAFFE, J.S.C.</u>	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED		<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION			
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER			
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>		REFERENCE

For plaintiffs: Jared Levine, Esq.
 Juan A. Arteaga, Esq.
 Gary A. Stahl, Esq.
 Randa Adra, Esq.
 Crowell & Moring LLP

And

Northern Manhattan Improvement Corp. Legal Services
 Matthew J. Chachere, Esq.
 Andrew Goodman, Esq.

For defendants: Rosenbert & Estis, PC
 Howard Kingsley, Esq.