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2020-08-21

### J. Diamond LLC v. Spiridonov

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CIVIL COURT CITY OF NEW YORK  
COUNTY OF KINGS: HOUSING PART T

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J. DIAMOND LLC.,

Petitioner,

-against-

DECISION & ORDER

L&T INDEX NO.: 56273/19

YEVENY SPIRIDONOV,

Respondent.

-----X

JEANNINE BAER KUZNIEWSKI, J.H.C:

Recitation as required by CPLR §2219(a) of the papers considered in the review of petitioner’s motion for summary judgment submitted this 6<sup>th</sup> day of August 2020:

Papers	Numbered
Notice of Motion and Affidavits Annexed	1
Answering Affidavits	2
Replying Affidavits	3
Exhibits:	
Other: Court File	4

Upon the foregoing cited papers, the decision and order on this motion is as follows:

This non-payment summary proceeding was commenced seeking rental arrears for the premises known as 61 Ten Eyck Street (“Building”) apartment 4R (“Apartment”). Respondent, represented by counsel, interposed an amended answer asserting, inter alia, a defense and counterclaim for rent overcharge. Petitioner now moves for partial summary judgment dismissing respondent’s second defense and counterclaim for overcharge and the fourth defense of illegal rent amount.

Respondent alleges in his answer that the overcharge results from a 10-year gap in DHCR apartment registrations between 2003 and 2014 and that the rent amount listed in the 2014 registration exceeds the legal collectible rent.

In a Decision/Order dated November 7, 2019 the Court granted respondent’s motion for leave to conduct discovery. Citing ample need and the newly enacted HSTPA, the Court directed Petitioner to provide documents, including leases, receipts for work and improvements, from 2002 to 2014.

Petitioner argues that as a result of the recent Court of Appeals decision in *Matter of Regina Metropolitan Co. LLC v NYS DHCR et al*, 2020 NY Slip Op 02127 [2020] discovery is no longer necessary,

and that petitioner is entitled to summary judgment on the issue of the overcharge. Respondent opposes.

Summary judgment is a drastic remedy and should not be granted where there is any doubt about the existence of a triable issue. (*Rotuba Extruders Inc. v Ceppos*, 46 N.Y.2d 223 [1979]). It is incumbent upon the movant to establish their cause of action or defense showing an entitlement to judgment as a matter of law, by tender of evidentiary proof in admissible form. (*Zuckerman v City of New York*, 49 N.Y.2d 557 [1980]). Only after movant's prima facie showing does the burden shift to the opposing party to demonstrate the existence of a factual dispute sufficient to require a trial of the matter. (*De Lourders Torres v Jones*, 26 N.Y.3d 742 [2016]).

Petitioner's motion must be denied. Petitioner argues that *Regina Metro* precludes an examination of the rental history beyond 2015. While *Regina* may ultimately affect the calculation and recovery of any potential overcharge in this matter, the Court acknowledged, as does petitioner, exceptions to the pre-HSTPA four-year lookback. Petitioner's legal analysis of the fraud exception falls short of the definitive evidentiary proof needed to sustain summary judgment.

Further, the Apartment registration reflects a preferential rent as recently as 2017 but Respondent's leases, annexed to the moving papers, fail to mention the legal registered or preferential rent at all. Further there are discrepancies between these leases and the registration statements. Petitioner's papers and analysis overlook these facts and offer no explanation at all for the omissions and inconsistencies. The Court finds this alone raises a factual issue enough to withstand summary dismissal.

Finally, petitioner is presently under an order to produce documents that may affect the outcome of the overcharge defense and counterclaim. To simply deny respondent's claim, amid the discovery process, would be inappropriate at this time.

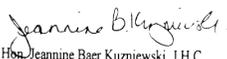
Accordingly, the Court finds that petitioner has failed to sustain its burden for summary judgment and the motion is denied.

Respondent does not oppose that portion of the motion directing him to pay ongoing use and occupancy pursuant to the Court's December 26<sup>th</sup> Order, nor does he dispute that he is in arrears. The respondent is therefore directed to comply with said Order regarding use and occupancy.

The matter is marked off calendar pending completion of discovery.

This constitutes the Decision and Order of this Court,

Dated: Brooklyn, New York  
August 21, 2020

  
Hon. Jeannine Baer Kuzniewski, J.H.C.  
So Ordered

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HON. JEANNINE BAER KUZNIEWSKI