2020-09-02

Linden Heights LLC v. St-Jean

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART D
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LINDEN HEIGHTS LLC.,

Petitioner Index No. LT # 85952/19

- against - **DECISION/ORDER**

OSLENE ST-JEAN
189-209 East 34th Street
Apt 20-B
Brooklyn, New York 11203

Respondent.

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HON. HANNAH COHEN:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of respondents order to show cause to vacate the stipulation and judgment, amend the answer and discovery, and petitioner's opposition and ensuing reply.

Papers	**Numbered**
Order to Show Cause	1
Opposition	2
Reply	3

Upon the foregoing cited papers, the Decision and Order on this Order to Show Cause is as follows:

Petitioner commenced this non payment proceeding against Oslene St-Jean and the premises are subject to rent stabilization. Respondent answered pro se and asserted the defense of warranty of habitability. On December 17, 2019 respondent appeared is court, pro se and the case was adjourned to January 28, 2020 . On January 28, 2020 respondent again appeared pro se, and entered

into an agreement wherein she agreed to a final judgment in the amount of $13,470.50 with a warrant issued forthwith and execution stayed through March 13, 2020 for respondent to pay the rental arrears and current rent. Respondent was given a detailed rent breakdown, repair dates were scheduled and respondent indicated in the stipulation that she would be seeking a one shot deal from HRA/DSS.

Respondent now with counsel, seeks by order to show cause to vacate the stipulation entered into pro se as she waived numerous meritorious defenses unknowingly and now disputes the amount due and asserts a rent over charge. Respondent seeks leave to amend her answer and deem it filed and upon such granting, seeks discovery pursuant to CPLR 408 and the production of documents.

Petitioner opposes the vacatur of the stipulation which respondent freely entered into and opposes amending the answer and discovery.

Vacatur of Stipulation

The Court is aware of the high regard given to stipulations and the long established precedent that they are not to be lightly cast aside except in cases where "fraud, collusion, mistake, or accident" is shown. (*Hallock v. State of N.Y.*, 64 NY2d 224, 230 [1984]). However, "where a stipulation was entered into inadvertently, unadvisedly, or improvidently, a party may be relieved from the consequences of a stipulation." (*Aston-Jones Mgmt v. Campbell*, NYLJ, May 21, 1997, at 1, col 3 [Civ Ct, Kings County]; *see e.g.*, *2114 Realty LLC v. Carrington*, NYLJ, Dec. 16, 1998, at 23, col 3 [Civ Ct, Kings County], *Dearie v. Hunter*, NYLJ July 8, 1998, at 25, col 1 [Civ Ct, NY County]), *and Tai Hop Lee Realty Corp. v. Tay*, 2007 NY Misc LEXIS 3317 [Civ Ct, NY County]). The aforementioned cases all involved pro se respondents wherein the courts exercised their discretion

and vacated the stipulations. Although "mere pro se status in and of itself is insufficient to vacate a stipulation," as respondent points out, it is a factor courts consider when presented with a motion to vacate a stipulation entered into improvidently or inadvisably by an unrepresented party.

In *Dearie*, the court concluded that since the pro se respondent "was unaware of...defenses..." it found were viable, it vacated the stipulation and judgment. In *Tai*, the court indicated that since it appeared respondent had a valid defense that jeopardized her possessory rights, coupled with the possibility that "she may have un advisably entered into the stipulation), it exercised its discretion in vacating the stipulation and judgment as to "avoid an unjust result."

The Appellate Term has also addressed the matter stating that "the court...has the power to relieve a party from the terms [of a stipulation] where it appears that the stipulation was entered into inadvisably or that it would be inequitable to hold the parties to the stipulation." (*600 Hylan Associates v. Polshak*, 17 Misc3d 134(A) [AT 2nd Dept 2007]) (vacating a stipulation and judgment where it deemed a viable laches defense was shown).

It is undisputed that respondent herein entered into the stipulation without the benefit of counsel, although this alone is insufficient grounds to vacate a stipulation. Respondent now raises a defense of a rent overcharge stemming from an initial incorrect rent in 2011 when she moved in, however, as the court reasons, below, said claim is not viable pursuant to the holding in *Regina Metropolitan Co. v New York State Division of Housing Community Renewal,* 2020 NY Slip Op 02127 [2020].

As such, respondent has failed to prove that the stipulation she entered into was not entered into in advisedly or on any grounds sufficient to set aside a contract, such as fraud of collusion. Respondent has failed to prove that she has a viable defense that was not raised that took the case

out of its ordinary course, requiring vacatur of the stipulation. Respondent affirms that she was "scared" and signed the stipulation but does not indicate that she asked the court for an adjournment during her allocation of the stipulation by the court. The stipulation indicated a detailed rent breakdown was provided, that petitioner was granted a judgment but execution stayed 45 days and that respondent was going to seek a one shot deal from HRA. Detailed repairs were also provided for in the stipulation. As such, the court finds no basis to vacate the so ordered stipulation of settlement (see *Nassau Educators Federal Credit Union v Wilson*, 48 Misc3d 135[A] [AT 2nd Dept 2015].

Amending the Answer

As to respondent's motion to amend the answer, courts have held that pursuant to CLR §3025 pleadings are freely amendable absent prejudice or surprise and potential merit to the defense. (see *Fischer v Broady*, 118 AD2d 827 [App Div 2nd Dept 1986]; CLR §3025(b)). Another consideration for the court is the whether the application to amend the pleadings were promptly made after discovery or awareness of the facts upon which such application is predicated (see *Beuschel v Mam*, 114 AD2d 569 [1985]. Herein the stipulation was entered into on January 28, 2020 and respondent's motion to vacate the stipulation and respondent's attorney's notice and motion to amend the answer is dated March 4, 2020. However, as the court denies the order to show cause to vacate the stipulation, the request to amend the answer is denied as moot.

Discovery

Although the court is denying the order to show cause to vacate the stipulation, the court for clarity will address respondent's overcharge claim and subsequent request for discovery which

served as a basis by the respondent in support of vacating the underlying stipulation of settlement. Respondent seeks discovery from 1984 forward in support of her alleged overcharge claim.

Courts have held that pursuant to CPLR 408 disclosure may be granted by permission of the court. To determine whether there is "ample need", court have looked to whether a party has proven the following six considerations: (1) whether petitioner has asserted facts to establish a cause of action; (2) whether there is a need to determine the information directly related to the cause of action; (3) whether the requested disclosure is narrowly tailored and is likely to clarify the disputed facts; (4) whether prejudice will result from granting the application for disclosure; (5) whether prejudice will be diminished by a court order; (6)whether the court can structure discovery (*New York University v Farkas*, 121 Misc.2d 643 [Civil Ct NY Co 1983]).

Respondent contends that due the questionable rent increase from the prior tenant in 2010 to her initial rent in 2011, the court should look beyond the four years from the claim of an overcharge pursuant to the holdings in *Grimm v DHCR*, 15 NY3d 358 [2010]; *Morton v 338 West 46th Street Realty LLC*, 992 NYS2d 621 [Civ Ct. NY Co 2014]). Respondent argues that in 2010 the legal rent was registered at $632.62 per month. When respondent moved in, in 2011 the rent was increased to $1050 per month, an increase of 66% in the rent. Based on this increase, respondent argues that she has shown ample need in seeking discovery (See *New York University* v *Farkas*, 121 Misc.2d 643 [Civ Ct NY County 1983]). Respondent also cites to the Housing Stability and Tenant Protection Act of 2019 (HSTPA) which extends the statute of limitation for rent overcharge claims from four year to six year and treble damages for six years. Furthermore, respondent cites to part "F" of the HSTPA which states "this act shall take effect immediately and shall apply to any claims pending or filed on ore after such date."

Petitioner argues that respondent has not demonstrated ample need as respondent failed to account for a longevity increase that the petitioner was entitled to in 2011, as the last tenant remained in occupancy for 12 years. Petitioner states that with a vacancy increase of 20% and longevity increase of 0.06%, any increase beyond those increases were minimal and do not amount to fraud, to trigger discovery or serve as a viable defense, mandating vacatur of the stipulation.

Petitioner also cites to the seminal case of *Regina Metropolitan Co. LLC v New York Division of Housing and Renewal*, 2020 WL 1557900, 2020 NY Slip Op 02127 [April 2020] which holds that rent overcharges must be decided on the law that was in effect at the time of the overcharge and that section "F" violated due process as it imposed a penalty for conduct imposed in the past and limited the overcharge claim to four years as contemplated for in pre HSTPA claims (See former RSL-26-516[a][2]. *Regina, supra* reinforced that holding that in claims prior to the enactment of HSTPA, only where a party demonstrated a "colorable claims of fraud" or identification of "substantial indicia" of a "landlord's fraudulent deregulation scheme to remove an apartment form the protections of rent stabilization" , a rental history could be examined beyond the four years from the date of the claim. (See *also Matter of Grimm v New York State Div. Of Housing and Community Renewal*, 15 NY3d 358 [2010]. Further the court reiterated its holding in *Matter of Boyd v New York State Div.* Of *Housing and Community Renewal*, 23 NY3d 999 [2014] which found that absent fraud, the four year look back rule applied ti reviewing rental history in examining a rent overcharge. The based date, absent a showing of fraud, is the rent actually charged four years before the overcharge claim, adding any legal increases entitled to the owner pursuant to the RSL for pre HSTPA claims (See *Corcoran* v *Narrows Bayview Co. LLC*, 183 AD3d 511 [1st dept 2020] (absent proof owner engaged in fraud, overcharge subject to four year look back period), *West v*

BCRE 90 West Street LLC, 124 NYS2d 886 [Sup. Court NY Co. 2020 (where respondent failed to prove fraudulent scheme, base date is rent in effect four years prior to filing an action plus lawful increases).

Here, the legal registered rent in 2010 was $632.62, adding a 20% vacancy increase and a twelve year longevity increase of 00.6% for 12 years, the increase should have amounted to a new rent of $813.79. The mere fact that respondent's move in rent increased an additional $236.21 alone, does not amount to an indicia of fraud requiring a look beyond the four year period, for pre HSTPA claims.

The court also notes, that although respondent has always a right to assert claims and defenses when brought to court in a summary proceeding, the court notes that in a prior non payment case under index number 85669/18, respondent with counsel, entered into a final judgment on 12/11/18, acknowledging arrears of $9,879.92 and signed a new lease on the same day the stipulation was entered into.

Respondent has failed to offer any evidence of fraud, other than the DHCR rent history. The court notes that there is no set formula to determine whether a tenant has raised an "indicia of fraud," a mere jump alone in the rent would not trigger an investigation beyond the four years (*Matter of Lowinger v DHCR,* 161 AD3d 550 [1st Dept 2018]).

The court of appeals has carved out an exception to the four year rule in *Matter of Grimm v New York State Div. Of Hous. & Community Renewal*, 15 NY3d 358 [2010] where the court found that given the specific facts of this case, that "where there is an indicia of possible fraud that would render the rent records unreliable, it was an abuse of discretion for DHCR not to investigate it"(id. At 33). The court found factors such as the tenants not receiving rent stabilized riders, failing to file

rent registrations, filing registrations retroactively, substantial increases in rent and the requirement of the tenants for making their own repairs in exchange for a "lower" rent indicia of fraud requiring a look back beyond the four year rent history. *Grimm, supra* also held that "an increase in the rent alone will not be sufficient to establish a colorable claim of fraud" and a mere allegations of fraud alone, would not suffice to inquire beyond the four year period. What is required "is evidence of landlord's fraudulent deregulation scheme to remove an apartment from the protections of rent stabilization. Although some mathematical irregularity may be seen in 2010 to 2011, the court is bound by the holding in *Regina, Surpra*. Respondent has not come forth with adequate facts to demonstrate fraud, and it cannot therefore, serve as a basis for an unknown or viable defense not raised previously and justifying vacatur of a so ordered stipulation. (See *57 Elhurst LLC* v *Willaims*, 68 Misc3d 215 [Civ Ct Queens co 2020]). Respondent does not dispute any increases since her initial lease of $1050 in 2011 to her current rent of $1,196.35, nine years later

Here, respondent having failed to sufficiently raise an indicia of fraud, discovery from 1984 is likewise denied as moot. As respondent's claim for overcharge is not viable, the court denies the order to show cause to vacate the stipulation and to amend the answer.

The judgment and warrant remains in full force and effect.

This constitutes the decision and order of this court.

Dated: September 2, 2020
Brooklyn, New York

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Hannah Cohen, J.H.C.