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Double Down Realty Corp. v. Avalone

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

-----X

Index No. 64012/19

DOUBLE DOWN REALTY CORP.,

Petitioner,

-against-

DECISION/ORDER

ANNA AVALONE,

Respondent.

-----X

SCHNEIDER, J.

In this summary holdover proceeding, petitioner claims that the apartment is unregulated and that it has terminated the respondent's month to month tenancy by a proper thirty day notice. Respondent claims that the apartment is rent stabilized and that the petition must therefore be dismissed. A motion by petitioner to strike defenses and a cross-motion by respondent to dismiss the proceeding were held in abeyance by a stipulation dated January 27, 2020. In that stipulation, petitioner also consented to produce documents in response to respondent's motion for discovery.

Now before the court is a new motion by petitioner seeking to bar respondent from introducing the documents voluntarily produced by petitioner as evidence in the case, and seeking an order requiring respondent to pay use and occupancy from the commencement of the case on June 21, 2019 and continuing. Petitioner asks that this new motion be considered before the court turns to the prior motions. Respondent opposes the new motion.

Petitioner's motion is denied. First, because the case was commenced after June 14, 2019, the request for use and occupancy is governed by the provisions of the HSTPA, which bar any award of retroactive use and occupancy while a case is pending, and which also bar such an award where, as here, there is a claim of rent overcharge.

In support of the second branch of the motion, petitioner argues, in essence, that it agreed to produce the documents before the Court of Appeals issued its decision in *Regina Metropolitan v. DHCR*, 2020 NY Slip Op. 02127, and that it would not have been required to produce the documents under the rule articulated in *Regina*. Respondent opposes the motion on the grounds that *Regina* did not in fact change the law affecting this case, and that even if it had, it is not a basis for setting aside a two attorney stipulation, freely entered into. Respondent is right on both counts.

The stipulation in which petitioner agreed to provide the documents now at issue was freely negotiated by two experienced landlord-tenant attorneys. Petitioner did not give up any substantive rights. It remains free to argue, on the merits, that the documents it produced in discovery are not relevant or do not affect its rights. It simply decided not to continue to litigate a discovery motion. The fact that it now wishes it had not produced the documents does not form a basis upon which to set aside the stipulation or to bar respondent from using the documents that were the fruits of the agreement. Petitioner charted its own course.


Further, although *Regina* held that the expanded statute of limitation for rent overcharges contained in the HSTPA could not be applied retroactively to revive rent overcharge claims on which the previous statute of limitations had already expired when the law was passed, it did not disturb pre-HSTPA law, which provided that a court could examine any part of the rental history of an apartment in order to determine the rent regulatory status of the apartment. See *Regina* at FN 4, *East-West Renovating v. DHCR*, 16 AD 3d 166 (1st Dept. 2005), *Gersten v. 56 7th Avenue LLC*, 88 AD 3d 189 (1st Dept. 2011), *Rosa c. Koscal 59*, 162 AD 3d 466 (1st Dept. 2018), *Mautner-Glick Corp. v. Higgins*, 64 Misc. 3d 16 (AT 1st Dept. 2019). In the case now before this court, the central issue is the rent regulatory status of the apartment.

Petitioner argues that the Appellate Term in *Vendaval Realty v. Felder*, 2020 NY Slip Op. 50786 (U) (AT 1st Dept.) held that *Regina* applies to cases in which the issue is rent regulatory status. It did not.

Vendaval is a rent overcharge case in which the trial court made a factual finding of fraud. The Appellate Term remanded the case for a new calculation of damages using the method prescribed in *Regina*. The court said nothing about the rules governing cases where status was the issue.

The case will be restored to the court's calendar for all purposes, including a review of the motions that remain pending. Counsel will receive a Teams invitation from chambers shortly.

Dated: 3/1/21



J. H. C.