2021-03-19

Similis Management LLC v. Dzganiya

SUPREME COURT, APPELLATE TERM, FIRST DEPARTMENT

March 2021 Term

Higgitt, J.P., Brigantti, Hagler, JJ.

Similis Management LLC, NY County Clerk's No. 570254/20

Petitioner-Landlord-Appellant,

- against -

Nino Dzganiya, Calendar No. 21-017

Respondent-Tenant-Respondent.

Landlord appeals from that portion of an order of the Civil Court of the City of New York, New York County (Kimon C. Thermos, J.), dated April 14, 2020, which denied its cross motion for summary judgment in a nonpayment summary proceeding.

Per Curiam.

Order (Kimon C. Thermos, J.), dated April 14, 2020, insofar as appealed from, affirmed, with $10 costs.

Applying pre-HSTPA (L 2019, Ch 36) law to this action (*see Matter of Regina Metro. Co., LLC v New York State Div. of Hous. and Community Renewal*, 35NY3d 332 [2020]), the Rent Stabilization Law imposed a four-year statute of limitations and lookback period on overcharge claims (*see* Rent Stabilization Law of 1969 [Administrative Code of City of NY] § 26–516[a][2]; *see also* CPLR 213–a), unless tenants produced evidence of fraud (*see Matter of Grimm v State of N.Y. Div. of Hous. & Community Renewal Off. of Rent Admin.*, 15 NY3d 358 [2010]). Contrary to landlord's contention, this fraud exception to the four-year look back period applies "both to a fraudulent scheme to deregulate and to a fraudulent overcharge scheme" (*Montera v KMR Amsterdam LLC*, __ AD3d __, 2021 NY Slip Op 00805[1st Dept 2021], citing *435 Cent. Park W. Tenant Assn. v Park Front Apts., LLC*, 183 AD3d 509, 510-511 [2020]).

In this case, landlord's motion for summary judgment on the nonpayment petition was properly denied because triable issues of fact are raised as to whether landlord engaged in a fraudulent overcharge scheme. While neither an increase in rent, standing alone, nor tenant's skepticism about apartment improvements suffice to establish indicia of fraud (*see Butterworth v 281 St. Nicholas Partners, LLC*, 160 AD3d 434 [2018]), here, there is considerably more. In addition to the large rent increases and

the paucity of evidence substantiating the claimed apartment improvements, the DHCR rent registrations filed by landlord raise triable issues of fact as to whether landlord falsely registered the legal rent to make a single 73% increase in rent (in 2011) appear to have occurred over a multi-year period (*see 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 at 366; *Altschuler v Jobman 478/480, LLC.*, 135 AD3d 439 [2016], *lv dismissed* 28 NY3d 945 [2016], *lv denied* 29 NY3d 903 [2017]; *Vendaval Realty, LLC v Felder*, 67 Misc 3d 145[A], 2020 NY Slip Op 50786[U] [App Term, 1st Dept 2020]). In addition, landlord failed to provide tenant and his predecessors with lease riders indicating how the legal rent was computed, which, in view of the other indica of fraud, "may well be viewed as an attempt to obfuscate the regulatory status of the apartment, despite that the rent had not reached the $2,000 threshold" (*Butterworth v 281 St. Nicholas Partners, LLC*, 160 AD3d at 434).

We have considered the remaining arguments and find them unavailing.

All concur.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

_____

Clerk of the Court

March 19, 2021