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2021 NY Slip Op 50513(U)

BEL-AIR LEASING L.P., Petitioner,
v.
SVITLANA BEREZOVSKA, ET AL., Respondents.

Index No. 74804/2019

Civil Court of the City of New York, Kings County.

Decided June 3, 2021.

Steven Brander, For Petitioner.

Cameron Arnold, For Respondent.

JACK STOLLER, J.

The Decision and Order on this motion are as follows:

Bel-Air Leasing. L.P., the petitioner in this proceeding ("Petitioner"), commenced this summary proceeding against Svitlana Berezovska ("Respondent"), a respondent in this proceeding, and Julio Calle ("Co-Respondent"), another respondent in this proceeding (collectively, "Respondents"), seeking a money judgment and possession of 2775 East 12th Street, Apt. 519, Brooklyn, New York ("the subject premises") on the ground of nonpayment of rent. Both parties moved for summary judgment. The Court denied both motions. Respondents now move to reargue.

Respondents sought summary judgment on the Eighth Affirmative Defense in their answer, which asserted that the subject premises is subject to the Rent Stabilization Law and that Petitioner improperly registered the subject premises with the New York State Division of Housing and Community Renewal ("DHCR") as required by N.Y.C. Admin. Code §26-517 and 9 N.Y.C.R.R. §2528.3 from 2008 through 2019.

Respondents argue that the evidence on the motion practice is insufficient to prove that the rents that Petitioner registered reflected the rents on actual leases. Respondents also ask the Court to infer that Petitioner could not have registered a rent for 2011 that accurately reflected a bona fide tenant.

Respondents' arguments misplace the burden on a summary judgment motion. As the movant for summary judgment, Respondents bear the burden of proving a prima facie entitlement to a judgment as a matter of law, tendering evidence sufficient to eliminate any material issues of fact as to the claims at issue. *Wonderly v. City of Poughkeepsie*, 185 AD3d 632, 633 (2nd Dept. 2020), *Kebbeh v. City of New York*, 113 AD3d 512, 513 (1st Dept. 2014), *People v. Grasso*, 50 AD3d 535, 545 (1st Dept.), *aff'd*, 11 NY3d 64

(2008). Respondents' motion does not show any lease in effect that is inconsistent with any of Petitioner's registrations. Accordingly, the absence in the record on this motion practice of leases reflecting every registration from 2008 through 2019 does not warrant summary judgment in Respondents' favor.

Respondents' argument regarding the 2011 registration similarly misplaces the burden of a movant for summary judgment. Summary judgment is a drastic remedy. *O'Brien v. Port Auth. of NY & N.J.*, 29 NY3d 27, 37 (2017), *Vega v. Restani Constr. Corp.*, 18 NY3d 499, 503 (2012). On a motion for summary judgment, all of the evidence must be viewed in the light most favorable to the party opposing the motion, and all reasonable inferences must be resolved in that party's favor. *Id.,* Matter of Larchmont Pancake House v. Bd. of Assessors, 33 NY3d 228, 252 (2019), *Gronsky v. County Of Monroe*, 18 NY3d 374, 381 (2011). Accordingly, the inference that Respondents ask the Court to draw with regard to the 2011 registration does not entitle them to summary judgment.

What remains is Respondents' argument that Petitioner's registrations from 2008 through 2019 were defective solely because of a purported rent overcharge. In particular, Respondents posit that Petitioner increased the rent from 2007 to 2008 by an amount greater than was permitted by law at the time.

Rent registrations that memorialize the actual amount of rent charged to the tenant and were not the product of fraudulent leases or otherwise legal nullities are not defective, as the applicable law requires landlords to register "the current rent" as distinct from the "*technically legally collectible rent.*" *Matter of Enriquez v. NY State Div. of Hous. & Cmty. Renewal*, 166 AD3d 404 (1st Dept. 2018)(emphasis added). Respondents argue that the Appellate Division wrongly decided this matter. Respondents' arguments notwithstanding, this Court is bound to apply the law as promulgated by the Appellate Division, including uncontradicted law established in another Department. Maple Med., LLP v. Scott, 191 AD3d 81, 90 (2nd Dept. 2020), D'Alessandro v. Carro, 123 AD3d 1, 6 (1st Dept. 2014).

Respondents do cite appellate authority in support of their motion. However, the appellate authority that Respondents cite does not stand for the proposition that a past impermissible rent increase — by itself — renders a registration defective. In *125 Court St., LLC v. Sher,* 58 Misc 3d 150(A)(App. Term 2nd Dept. 2018), the Court found that a landlord did not register with DHCR the actual rents it charged tenants. As noted above, Respondents do not show leases with "actual rents charged" that Petitioner did not register with DHCR.

In *Bradbury v. 342 W. 30th St. Corp.*, 84 AD3d 681 (1st Dept. 2011), the Court found — after a trial, not on summary judgment — that a landlord made "intentionally false" filings. *Id.* at 684. This finding of the Court does not support the proposition that registrations that otherwise accurately reflect rents on leases are defective because the registered rents would have amounted to overcharges. Not only can the Court harmonize *Bradbury, supra*, with *Enriquez, supra*, in that regard, but the Appellate Division in *Enriquez, supra*, actually cited *Bradbury, supra*, in support of its own point.

Respondents cite *Jazilek v. Abart Holdings LLC*, 72 AD3d 529 (1st Dept. 2010). However, Justice Lebovits, who Respondents cite elsewhere in their memorandum,

himself held that "*Jazilek*'s holding is limited to situations akin to the facts of that case[,] circumstances in which the lease was the product of fraud or in which the lease or the rent registration statement was a legal nullity (or both)." *Irrevocable Trust v. Biggart,* 2019 N.Y.L.J. LEXIS 2049, *8 (S. Ct. NY Co.). The proposition that registrations are defective when landlords making them engaged in fraud and registered fictional rents, as did the landlords in *Bradbury, supra*, and *Jazilek, supra*, does not mean that a prior impermissible rent increase alone, with no other indicia of fraud, renders a rent registration defective. *Compare Matter of Grimm v. State of New York Div. of Hous. & Community Renewal Off. of Rent Admin.*, 15 NY3d 358, 367 (2010)(an impermissible increase in the rent alone will not be sufficient to establish a colorable claim of fraud sufficient to implicate the reliability of a base date rent).

The authority that Respondents cite that comes closest to supporting their argument is Ernest & Maryanna Jeremias Family P'ship, LP v. Matas, 39 Misc 3d 1206(A)(Civ. Ct. Kings Co. 2013). To the extent that Ernest & Maryanna Jeremias Family P'ship, LP, *supra*, stands for the proposition that an impermissible rent increase alone renders a registration defective, the Court respectfully declines to follow such persuasive authority in derogation of the binding authority of *Enriquez, supra*. That being said, the holding in *Ernest & Maryanna Jeremias Family P'ship, supra*, does not expressly stand for that proposition. The Court in *Ernest & Maryanna Jeremias Family P'ship, supra*, made a factfinding after a full trial that a landlord had registered a "false" rent, particularly upon finding that individual apartment improvements that the landlord had claimed to have made were not in fact made. To be repetitive, on this summary judgment motion, Respondents have not submitted similar proof.

The bottom line is that a rent overcharge cause of action is distinct from a claim that a landlord's rent registrations are defective. *Rosenzweig v. 305 Riverside Corp.,* 35 Misc 3d 1241(A)(S. Ct. NY Co. 2012)(Gische, J.), *Ellwood Realty v. Nakazwe,* 2018 N.Y.L.J. LEXIS 4093, *11-12 (Civ. Ct. NY Co.). The purpose of a rent registration is to memorialize facts about tenancies so as to enable landlords, tenants, DHCR, and Courts to accurately evaluate anything having to do with, *inter alia,* the legality of rents. Certainly when landlords fail to so memorialize those facts, whether with a design to commit fraud or out of neglect or for some other reason, a number of consequences follow. But when a landlord otherwise complies with an accurate registration of rents charged, the underlying merits of the rents themselves do not implicate the record-keeping function of the registration itself. *See 699 Venture Corp. v. Trinidad,* 2020 N.Y.L.J. LEXIS 616 (Civ. Ct. Bronx Co.).

Moreover, the only way for the Court to even consider Respondents' defense in the first place would be to consider the impact of a purportedly defective registration filed eleven years prior to the interposition of the defense.[1] Up until the passage of the Housing Stability and Tenant Protection Act of 2019 ("HSTPA"), CPLR §213-a precluded an examination of rent registrations filed more than four years prior to the interposition of a rent overcharge claim. While the passage of HSTPA repealed that restriction, a retroactive application of that repeal would violate Petitioner's substantive due process rights. Matter of Regina Metro. Co., LLC v. NY State Div. of Hous. & Cmty. Renewal, 35 NY3d 332, 386 (2020).

Respondents posit that they are not seeking overcharge damages, but merely seeking

dismissal of the proceeding on a failure of Petitioner to satisfy a condition precedent of a judgment for nonpayment of rent, i.e., Petitioner's failure to properly register the subject premises. Respondents argue, therefore, that any prohibitions on looking back to rent increases that far in the past do not apply. However, if Respondents were to prevail, Petitioner would either be deprived of a remedy for nonpayment of rent or Petitioner would have to submit amended registrations with lower rents, both of which would increase Petitioner's liability for past conduct and impose new duties on Petitioner with respect to transactions already completed. Accordingly, adopting Respondents' argument would retroactively burden Petitioner in violation of the Constitution. *Id.* at 366.

Without retroactively applying HSTPA to Petitioner, under the prior prevailing law "review of rental history outside the four-year lookback period was permitted *only* in the limited category of cases where the tenant produced evidence of a fraudulent scheme to deregulate and, even then, solely to ascertain whether fraud occurred — not to furnish evidence for calculation of the base date rent." Id. at 355 (emphasis added). Whether Respondents seek overcharge damages or not, Respondents are clearly referring to the registration history of the subject premises pre-dating four years before the interposition of their answer to calculate the legality of the rent Petitioner has been registering, even if for putatively limited purposes. The law does not permit such a use of such dated registrations.

Accordingly, the Court denies Respondents' motion. The Court will calendar a trial date in consultation with the parties.

This constitutes the decision and order of this Court.

[1] The Court deemed Respondents' amended answer raising this defense to be filed *nunc pro tunc,* and thus filed at the time Respondent initially answered on August 20, 2019. Petitioner filed the registration for the 2008 rent with DHCR on July 9, 2008.