2022-01-14

Schaer v. Park Terrace Realty, LLC

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PAUL A. GOETZ **PART** 47

Justice

----------X

CLAUDIA SCHAER, VANESSA CRUZ,

Plaintiffs,

- v -

PARK TERRACE REALTY, LLC,METROPOLITAN PROPERTY SERVICES, MATTHEW WEINSTEIN, DOMINICK GUARNA

Defendants.

----------X

INDEX NO. 161268/2018

MOTION DATE 04/13/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 33

were read on this motion to/for AMEND CAPTION/PLEADINGS.

In this residential rent overcharge action, defendants Park Terrace Realty, LLC (Park Terrace), Metropolitan Property Services (MPS), Matthew Weinstein (Weinstein) and Dominick Guarna (Guarna; together, defendants) move jointly pursuant to CPLR 3025 (b) for leave to serve and file an amended answer (motion sequence number 001).

BACKGROUND

Plaintiffs Claudia Schaer (Schaer) and Vanessa Cruz (Cruz; together, plaintiffs) are the respective tenants of record of apartments F14 and C4 in a residential apartment building located at 221 Seaman Ave. in the County, City and State of New York (the building). *See* notice of motion, exhibit A (verified complaint), ¶¶ 2-3. Park Terrace is the building's record owner, MPS is the building's managing agent, and Weinstein and Guarna are, respectively, the principal officers of Park Terrace and MPS. *Id.*, ¶¶ 4-7.

Plaintiffs commenced this action on January 7, 2019. *See* summons and verified complaint, aff of service. Defendants filed an answer on January 16, 2019. *See* verified answer. The relevant portion of that original answer provided that defendants:

> "Deny the allegations in paragraph 1 of the complaint, except admit that plaintiffs are rent stabilized tenants of their respective apartments. Defendants further admit that plaintiffs were inadvertently overcharged, but state that the overcharges have been refunded, together with interest."

Id., verified answer, ¶ 1. Defendants' current motion seeks leave to serve and file an amended answer, the relevant portions of which assert as follows:

> "1. [Defendants] deny the allegations in paragraph 1 of the complaint, except admit that plaintiffs are tenants of their respective apartments.
>
> * * *
>
> FIRST AFFIRMATIVE DEFENSE
>
> "81. The subject apartments are not rent stabilized and therefore, Plaintiffs have not been overcharged.
>
> "82. Prior to September 1, 2013, and subsequent to the expiration of J-51 benefits for the building located at 31-41 Park Terrace, Apartment C4 was subject to high rent vacancy deregulation, as the unit became vacant with a legal rent in excess of the deregulation threshold in effect at the time. Therefore, when Plaintiff Cruz took possession of Apartment C4 in September 2013, she was not a rent stabilized tenant. As such, Plaintiff Cruz was not overcharged.
>
> "83. Prior to December 1, 2008, the legal rent for Apartment F14 located in 221-229 Seaman Avenue was in excess of the deregulation threshold in effect at the time. Therefore, when Plaintiff Schaer took possession of Apartment F14, the apartment was subject to rent stabilization solely as a result of the building's receipt of J-51 benefits.
>
> "84. Consistent with the New York State Division of Housing and Community Renewal's ('DHCR') long standing public guidance, Defendants did not include a J-51 rider with Plaintiff Schaer's initial lease, which would have otherwise permitted Defendants to lawfully deregulate the unit upon the expiration of Plaintiff's Schaer's initial lease.
>
> "85. The Court of Appeals in *Matter of Regina Metro. Co., LLC v. New York State Div. of Hous. & Community Renewal*, __NY3d__ (2020) (Ct. App. 4/2/20), recently held that owners cannot be retroactively punished for failing to take actions that were lawful at the time.
>
> "86. Moreover, the *Regina* Court also held that owners who fail to take ministerial acts cannot be found to have waived substantive rights under Rent Stabilization.
>
> "87. As the issuance of a J-51 Rider is ministerial, owner's failure to issue one cannot serve to extend rent stabilization rights indefinitely beyond the expiration of the J-51 benefits. But for DHCR's erroneous guidance, Plaintiff Schaer would have been issued a

> J-51 Rider which would have terminated any rights she had under rent stabilization, effective November 30, 2009.
> "88. As Plaintiff Schaer's rights under rent stabilization should be deemed to have expired with her initial lease, on November 30, 2009, she could not have been overcharged."

See notice of motion, exhibit C (proposed amended answer). The gravamen of defendants' motion is that they wish to contest the rent regulated status of plaintiffs' apartments in their pleadings, rather than admit that those apartments are rent stabilized.

DISCUSSION

CPLR 3025 (b) ("Amendments and supplemental pleadings by leave") provides as follows:

> "A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading."

CPLR 3025 (b). The Appellate Division, First Department, has long interpreted this statute to require "that leave to amend a pleading shall be freely granted absent prejudice or surprise resulting from the delay," unless "the proposed pleading fails to state a cause of action ... or is palpably insufficient as a matter of law." *Davis & Davis v Morson*, 286 AD2d 584, 585 (1st Dept 2001). The First Department also recognizes that grants of leave to amend are "committed . . . to the sound discretion of the trial court," and that "to obtain leave, a [movant] must submit evidentiary proof of the kind that would be admissible on a motion for summary judgment." *Velarde v City of New York*, 149 AD3d 457, 457 (1st Dept 2017) (internal citations omitted). The First Department has upheld denials of leave as a provident exercise of discretion where the moving party fails to submit proposed amended pleadings or adequate supporting proofs. *See*

e.g., *Federated Fire Protection Sys. Corp. v 56 Leonard St., LLC*, 188 AD3d 414 (1st Dept 2020).

Here, defendants have submitted a proposed amended answer as well as copies of all of Schaer's and Cruz's respective leases and the amended DHCR registration histories of apartments F14 and C4. *See* notice of motion, exhibit C; Dessner aff, exhibits 1-4. Because they have submitted a proposed pleading and admissible supporting documentary evidence, defendants have satisfied the basic requirements of CPLR 3025 (b). Plaintiffs do not contest the fact that defendants made the necessary submissions.

Defendants further assert that the "proposed affirmative defense and amendments to the answer have merit," because "Cruz was not subject to rent stabilization" and "Schaer's tenancy was subject to deregulation." *See* defendants' mem of law at 3-6. They specifically argue that the Court of Appeals' holding in *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal* (35 NY3d 332 [2020]) mandates those factual findings regarding both apartments' rent regulated status in light of the units' respective leasing and registration histories. *Id.* Plaintiffs respond that "*Regina Metropolitan* did not change the law governing the rent stabilized status of apartments that formerly received J-51 benefits," and assert that both apartment F14 and apartment C4 "remain subject to rent stabilization." *See* Heller affirmation in opposition, ¶¶ 41-64. They note that defendants purported to deregulate both units at times when the building was enrolled in the J-51 real estate tax abatement program, and that the Court of Appeals holding in *Roberts v Tishman Speyer Props., L.P.* (13 NY3d 270 [2009]) held that all apartments in buildings enrolled in that program remained rent stabilized, as a matter of law, until their buildings' enrollment expired. *Id.* Plaintiffs then argue that apartment F14 and apartment C4 remained subject to rent stabilization after the building exited the J-51 program in

2009 because defendants did not comply with the deregulation procedures set forth in the Rent Stabilization Law (RSL) and Code (RSC). *Id.* Defendants reply that plaintiffs' argument is flawed because (a) it misreads the *Regina Metropolitan* holding (since "re-regulation" is not supported by the documentary evidence), and (b) it incorrectly asserts that defendants "waived" their right to deregulate the subject units. *See* Bernanche reply affirmation, ¶¶ 4-29.

The documentary evidence submitted in connection with defendants' motion (i.e., the units' leases and DHCR registration history) is potentially sufficient to support either party's legal argument when it is read in light of the controlling Court of Appeals jurisprudence. However, since this case is still in the pre-answer stage, it would not be appropriate at this juncture to determine which legal argument should prevail. After the close of discovery, either party may wish to submit additional evidence to further support its' legal argument concerning the efficacy (or not) of defendants' purported deregulation of apartments F14 and C4. They should have the opportunity to do so. In addition, the First Department has recently recognized that, where an allegedly deregulated apartment's DHCR history shows that the landlord left it unregistered until well after *Roberts* was decided in 2009, the landlord's neglect may constitute fraud sufficient to warrant disregarding the four- or six-year "lookback" limitation period of RSL § 26-516. *See Montera v KMR Amsterdam LLC*, 193 AD3d 102 (1st Dept 2021). Here, apartment F14's and C4's respective DHCR histories both show that defendants filed amended registration statements on January 14, 2019, after having evidently left both units unregistered for a decade after *Roberts* was decided. *See* notice of motion, Dessner aff, exhibits 3, 4. This might support an inquiry into whether fraud was involved in deregulating the units prior to the commencement of plaintiffs' respective tenancies. However, the parties' papers do not discuss the fraud issue. They should have the opportunity to litigate this issue after the close of

discovery as well. Therefore, it is a provident exercise of discretion at this juncture to permit defendants to serve and file their proposed amended answer with affirmative defenses.

DECISION

ACCORDINGLY, for the foregoing reasons it is hereby

ORDERED that the motion, pursuant to CPLR 3025 (b), of defendants Park Terrace Realty, LLC, Metropolitan Property Services, Matthew Weinstein and Dominick Guarna (motion sequence number 001) for leave to amend their answer herein is granted, and the amended answer in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that the plaintiffs shall serve a reply to the amended answer or otherwise respond thereto within 20 days from the date of said service.

20220114115701PGOE1218777AC4460E7140E5BD7289C4ACEDBFA7

1/14/2021
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
	X	GRANTED	DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE