2022-08-05

# West Side Marquis LLC v. DeJourdan

CIVIL COURT OF THE CITY OF NEW YORK1
COUNTY OF NY: HOUSING PART G

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WEST SIDE MARQUIS LLC
Petitioner,

-against-

BRENDA DE JOURDAN, EVELYN DE JOURDAN
ELAN DE JOURDAN, "JOHN DOE" & "JANE DOE"
Respondent.

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Index No. LT 74208/19

DECISION/ORDER

Present: Hon. Daniele Chinea
Judge, Housing Court

Recitation, as required by CPLR 2219(A), of the papers considered in the review of Petitioner's Motion to strike defenses and for summary judgment (seq 1) and Respondent's cross-motion denying summary judgment and dismissing the proceeding pursuant to CPLR §3211(a)(7) (seq 2):

| PAPERS | | NYSCEF NUMBER |
|---|---|---|
| Notice of Motion & Affirmation/Affidavits/Exhibits (Seq 1) | | 4-32 |
| Notice of Cross-Motion & Affirmation/Affidavits/Exhibits (Seq 2) | | 33-36 |
| Memo of Law in Opposition to Cross-Motion | | 37 |
| Reply Affirmation | | 38-39 |

Upon the foregoing cited papers, the Decision/Order in this Motion is as follows:

Petitioner's motion is denied, Respondent's cross-motion is granted to the extent of dismissing the Petition for failure to state a cause of action. The Housing Stability and Tenant Protection Act (HSTPA) supersedes the "WSM Agreement". The petition is dismissed as against all respondents and Petitioner shall offer Brenda De Jourdan a proper lease renewal.

HISTORY:

Petitioner commenced this holdover proceeding on December 17, 2019, seeking a judgment of possession and warrant of eviction as against respondents based upon allegation that Brenda De Jourdan (the "Respondent") failed to sign a duly offered renewal lease in violation of the Rent Stabilization Code. On September 17, 2019, Petitioner offered Respondent renewal lease options as the recognized successor of the deceased tenant of record, Elliot De Jourdan. Respondent did not sign either of the leases offered and Petitioner commenced this proceeding.

Respondent answered through counsel on June 16, 2020, asserting failure to state a cause of action because the offered renewal was not properly calculated under the Rent Stabilization Code and not a legitimate offer. Respondent requests dismissal and raises a counterclaim for attorneys' fees.

UNDISPUTED FACTS:

In April 2005, the prior landlord and petitioner's predecessor in interest, caused the building to be removed from the Mitchell-Lama program and, thereby, become subject to Rent Stabilization. It filed an application with the Department of Homes and Community Renewal (DHCR) seeking to adjust rents to the initial legal regulated rents (LRR) at the building pursuant to RSL §26-513(a). The tenants at the time (the "WSM Tenants") objected to the proposed LRR; calculated at $500 per room effective May 1, 2005. After 18 months of litigation, the parties settled via the West Side Manor Adjustment Dispute Settlement Agreement (the "WSM Agreement"). The WSM Agreement provided that the WSM Tenants and certain of their eligible successors would be permitted to renew their leases for an amount less than the LLR, called the Adjusted Collectible Rent (ACR). Both the LRR and ACR were registered with DHCR and DHCR ratified the WSM Agreement. The WSM Agreement was never appealed or challenged. The WSM Agreement specifically states, "[s]uccessors shall have no right – except as explicitly provided herein – to pay the ACR – or any rent other than the LRR – for any WSM apartment at the time of succession." (¶3, WSM Agreement; NYSCEF #12). Mr De Jourdan was a signatory to the WSM Agreement. All parties agree Respondent does not qualify for the ACR under the WSM Agreement.

Respondent is the remaining family member/successor to the deceased tenant of record, Elliot De Jourdan. Mr De Jourdan succeeded to the tenancy of his mother, Thelma De Jourdan, in 2004.

Mr De Jourdan's first renewal after execution of the WSM Agreement commenced January 1, 2007 and provided for a LRR of $2,195 for a two year lease ending March 31, 2009 (the "2007 Renewal"). The "DHCR Preferential Rent Order Rider" annexed to the 2007 Renewal calculated an ACR for the subject premises at $464.56. It stated that all renewals will be calculated based upon the ACR as long as the tenant remains an "Approved Tenant" under the WSM Agreement. In Mr De Jourdan's final renewal dated February 20, 2017, Mr De Jourdan elected to renew for two years for a monthly rent of $950.88 per month commencing June 1, 2017; the LRR was $2509.23 per month (the "2017 Renewal"). Mr De Jourdan passed away on October 9, 2017, during the term of the 2017 Renewal, which expired on May 31, 2019.

On June 14, 2019, the HSTPA became law with immediate effect. The HSTPA amended the Rent Stabilization Law §26-511(c)(14) to require landlords to offer renewals based upon the same amount paid by and accepted from the tenant under the expiring lease, effectively ending the practice of landlords being able to rescind preferential rents at each renewal.

Section 26-511(c)(14) provides, in pertinent part:

> "any tenant who is subject to a lease on or after the effective date of a chapter of the laws of two thousand nineteen which amended the subdivision or is or was entitled to receive a renewal or vacancy lease on or after such date, upon renewal of such lease, *the amount of rent for such housing accommodation that may be charged and paid shall be no more than the rent charged to and paid by the tenant prior to that renewal, as adjusted by the most recent applicable guidelines increases and any other increases authorized by law.*" (emphasis added)

On September 17, 2019, Petitioner offered Respondent two renewal options. The first provided a renewal commencing January 1, 2020, at an option of a one-year term at a rate of $2720.52 per month, or a two-year term at a rate of $2747.32 per month (the "Renewal Offer"). Alternatively,

Respondent was offered a renewal commencing June 1, 2019, at an option of a one-year term at a rate of $2720.52 per month, or a two-year term at a rate of $2747.32 per month (the "Alternative Renewal Offer," collectively with the "Renewal Offer", the "Renewal Offers"). None of the Renewal Offers were calculated based upon the ACR paid by Mr De Jourdan pursuant to the 2017 Renewal. Respondent did not accept either offer and this case commenced.

MOTIONS:

In its motion for summary judgment, Petitioner argues that the WSM Agreement is clear and binding. Respondent is not entitled to the ACR based upon the duly executed, never challenged, WSM Agreement, to which Mr De Jourdan was a signatory and under which Mr De Jourdan realized all the benefit intended. Petitioner cites prior cases where courts upheld the enforceability of the WSM Agreement against valid successors. *See, e.g., DeJesus, et al. v West Side Marquis LLC, et al.; Ind. # 151122/2017 (NY Cty Sup. Ct., J. Edwards, November 13, 2017)* and *West Side Marquis LLC v Tolbert, et al.; L&T Ind. # 061764/18 (NY Cty Civ Ct, J. Elsner, November 29, 2018).* Petitioner also argues that these rents were negotiated before and ratified by the DHCR, which is the State agency in charge of regulation and enforcement of the Rent Stabilization Law and the Rent Stabilization Code. Based upon DHCR involvement, Petitioner argues that the ACR is not a "traditional preferential rent" and restoration of the LRR is an increase "authorized by law" and permissible under HSTPA. *RSL §26-511(c)(14).*

In its motion, Respondent argues HSTPA requires Petitioner to offer a renewal based upon the ACR paid by the deceased tenant. The WSM Agreement permitting increase to the LRR is now invalid after passage of HSTPA, which preempts any private agreement, regardless of DHCR involvement. Petitioner should have based the Renewal Offers upon the terms of the 2017 Renewal adjusted to reflect the most recent rent guidelines increases. The Renewal Offers made were not in compliance with the RSC, as amended by the HSTPA, thus, Respondent's failure to sign the renewal was not a breach but a rightful refusal based upon the improper terms of the Renewal Offers. Respondent distinguishes the cases cited by Petitioner in support of the enforceability of the WSM Agreement because all cited cases pre-date the passage of the HSTPA.

DECISION AND ORDER:

The parties do not dispute the primary facts of this proceeding. The dispute revolves around whether the passage of the HSTPA and resulting amendment to RSC §26-511(c)(14) invalidates the WSM Agreement and requires Petitioner to offer a renewal lease based upon the ACR, not the LRR.

To reiterate, RSC §26-511(c)(14), as amended by HSTPA provides:

> "any tenant who is subject to a lease on or after the effective date of a chapter of the laws of two thousand nineteen which amended the subdivision or is or was entitled to receive a renewal or vacancy lease on or after such date, upon renewal of such lease, the amount of rent for such housing accommodation that may be charged and paid shall be no more than the rent charged to and paid by the tenant prior to that renewal, *as adjusted by the most recent applicable guidelines increases and any other increases authorized by law.*" (emphasis added)

Petitioner argues that the WSM Agreement is comparable to other increases permissible under the law because the agreement was ratified by the DHCR and has been relied upon since its execution

with the support of the Courts. Petitioner does not explain how DHCR ratification of a private agreement creates an increase permissible by law. The Court understands the statute to refer to the increases authorized by the RSC or RSL; not to refer to any private agreement ratified by DHCR. DHCR has no specific authority to set the rents in rent regulated apartments. That task belongs to the Rent Guidelines Board. DHCR, like the Courts, responds to disputes and complaints brought to it by interested parties. Thus, DHCR ratifying a private agreement is not akin to an increase authorized by law, but akin to a "so ordered" stipulation of settlement. The HSTPA supersedes any private agreement between the parties, whether so ordered by a court or ratified by DHCR. This is especially true because it is considered a violation of public policy to permit parties to waive Rent Stabilization protections by private agreement. *See, Drucker v Mauro, 30 AD3d 37 at 39 (1st Dept 2006) ("It is well settled that the parties to a lease governing a rent-stabilized apartment cannot, by agreement, incorporate terms that compromise the integrity and enforcement of the Rent Stabilization Law.")*

The Court is sympathetic to Petitioner's argument that they have been operating in good faith reliance on the enforceability of the WSM Agreement, but prospective changes to the law, especially the Rent Stabilization Law and Code, are to be anticipated and are not so unjust as to make them unenforceable. *Matter of Regina Metropolitan Co. v New York State Division of Housing and Community Renewal, 35 NY3d 332 (2020) ("no party doing business in a regulated environment like the New York City rental market can expect the RSL to remain static, as we have repeatedly made clear in cases challenging prospective legislation altering the formula for rent increases under prior schemes." (internal citations omitted)).*

Based upon the foregoing, the Petition is dismissed. The Lease offered Respondent was not in compliance with the Rent Stabilization Code §26-511(c)(14). Respondent's refusal to execute to offered renewal was, therefore, not a violation of the Rent Stabilization Law or Code. Petitioner shall offer Respondent a proper rent stabilized renewal lease calculated based upon the ACR charged to the deceased Mr De Jourdan.

The claim for attorney's fees is denied as there is no lease between the parties. *530 Second Avenue Co LLC v Zenker, 67 Misc 3d 46 (AT 1st Dep't 2020)*

This constitutes the decision and order of the Court. A copy of this Order will be uploaded to NYSCEF.

DATED: August 5, 2022

SO ORDERED

Hon. Daniele Chinea, JHC

HON. DANIELE CHINEA
JUDGE, HOUSING COURT