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Williams v Daphne Realty Corp.
2020 NY Slip Op 31466(U)
May 21, 2020
Supreme Court, New York County
Docket Number: 155186/2018
Judge: W. Franc Perry
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

-----X

DAMON WILLIAMS

Plaintiff,

- v -

DAPHNE REALTY CORP.,

Defendant.

-----X

INDEX NO. 155186/2018
MOTION DATE 10/31/2019
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

In this action, plaintiff is seeking renewal of this court’s June 21, 2019 decision/order pursuant to CPLR 2221 (e) (2) on the basis that there has been a change in the law relative to the doctrine of primary jurisdiction and application of the newly enacted Housing Stability and Tenant Protection Act of 2019 (L 2019, ch 36, Part F, §§ 1, 3) (HSTPA), to the claims alleged by plaintiff against defendant here. Specifically, plaintiff maintains that his choice of forum controls, pursuant to the HSTPA and as such, his claims must be adjudicated in Supreme Court and not in the New York State Division of Housing and Community Renewal (DHCR). Defendant opposes the motion on the basis that it is untimely and because the HSTPA vests this court with concurrent jurisdiction to hear plaintiff’s claims.

BACKGROUND

The facts relative to this matter are fully set forth in this court’s prior decision and order, NYSCEF Doc. No. 19, and will not be repeated here. This court granted defendant’s pre-answer motion to dismiss on the basis that plaintiff’s claims seeking an order declaring the subject

apartment to be rent stabilized and to recover damages resulting from the landlord's alleged rent overcharge, were to be properly adjudicated before the DHCR, the administrative agency with the necessary expertise to dispose of plaintiff's claims.

STANDARD OF REVIEW/ANALYSIS

A motion for leave to renew is left to the sound discretion of the trial court (see e.g. *Caryl S. v Child & Adolescent Treatment Servs.*, 238 AD2d 953, 661 NYS2d 168 [4th Dept 1997]). Renewal may be based upon "a change in the law that would change the prior determination" (CPLR 2221 [e] [2]; *560-568 Audubon Tenants Assn. v 560-568 Audubon Realty, LLC*, 65 Misc.3d 759 [NY Sup Ct 2019]). A motion for leave to renew based upon a change in the law must be made prior to the entry of a final judgment or before the time to appeal has expired (see *Dinallo v DAL Elec.*, 60 AD3d 620, 874 NYS2d 246 [2d Dept 2009]; *Glicksman v Board of Educ./Cent. School Bd. of Comsewogue Union Free School Dist.*, 278 AD2d 364, 717 NYS2d 373 [2d Dept 2000]).

Initially, the court finds the motion to renew is timely, as plaintiff has filed a timely Notice of Appeal which appeal has not yet been decided and the instant motion has been filed prior to the entry of a final judgment. As noted by plaintiff, immediately prior to this court's decision, the Legislature enacted the HSTPA on June 14, 2020 making sweeping changes to the rent stabilization laws. Specifically, in support of renewal, plaintiff relies on Part F, § 1 (b) (i), which provides in part that, "a complaint under this subdivision may be filed with the state division of housing and community renewal or in a court of competent jurisdiction at any time".

In dismissing this action without prejudice to plaintiff filing his claims before the DHCR, this court relied on the doctrine of primary jurisdiction and case law interpreting the application of that doctrine in rent overcharge cases, including *Olsen v Stellar W. 110, LLC*, 96 AD3d 440,

441-442, 946 N.Y.S.2d 128 [1st Dept 2012] [referring rent overcharge case to DHCR given its expertise in rent regulation] and *Collazo v Netherland Prop. Assets LLC*, 155 AD3d 538, 64 N.Y.S.3d 537 [1st Dept 2017], lv granted 31 N.Y.3d 910, 81 N.Y.S.3d 368, 106 N.E.3d 751 [2018] [adjudication of claim for rent overcharge should be resolved in first instance by DHCR]. (NYSCEF Doc. No. 19, at p. 5).

As this court noted in its decision, it has concurrent jurisdiction with DHCR to adjudicate actions seeking to recover rent overcharges, thus it also has discretion to transfer claims to the administrative agency vested with the authority and technical expertise to adjudicate such claims, in the first instance. In granting the motion to dismiss, this court concluded that “the DHCR is in the best position to determine and calculate the amount of treble damages, if any, that the RSC allows for ‘willful’ rent overcharges.” (NYSCEF Doc. No. 19, at p. 5). The Court of Appeals has now modified the First Department’s decision in *Collazo v Netherland Prop. Assets LLC*, and well established precedent concerning the doctrine of primary jurisdiction in rent overcharge cases which this court relied upon in dismissing plaintiff’s claims without prejudice to refiling the claim before the DHCR.

Specifically, the Court of Appeals in *Collazo v Netherland Prop. Assets LLC*, 155 AD3d 538, 538, 64 N.Y.S.3d 537 [1st Dept 2017], modified NY3d , 2020 N.Y. Slip Op. 02128 [2020]), addressed the issue of primary jurisdiction and found that the HSTPA provides that “[t]he courts and [DHCR] shall have concurrent jurisdiction, subject to the tenant's choice of forum (L 2019, ch 36, Part F, §§ 1, 3)” (*id.* at *1). The Court then found that “plaintiffs' choice of forum controls and these claims should be adjudicated in Supreme Court.” (*id.*) Judge Rivera, who dissented in part, concurred with the majority's decision, noting her agreement that the newly enacted HSTPA provisions, Part F, §§ 1, 3 dictate that the plaintiffs' choice of forum

controls and when a plaintiff chooses to litigate claims in Supreme Court, that is the forum where the claims will be adjudicated. (*id.* at *2).

This court finds that the *Collazo* Court's interpretation of Part F, §§ 1, 3 of the HSTPA effects "a change in the law that would change the prior determination," of this court. In its decision, the Court of Appeals has interpreted the language set forth in Part F, §§ 1, 3 of the HTSPA to hold that where the tenant's choice of forum is Supreme Court, the court may not dismiss the action relying on the doctrine of primary jurisdiction. *Collazo v Netherland Property Assets LLC* (NY3d , 2020 N.Y. Slip Op. 02128 [2020]).

Consequently, as this court is bound by the precedent enunciated by the *Collazo* Court, and because plaintiff initially sought to pursue his rent overcharge claims in Supreme Court, his action may not be dismissed in favor of the claims being heard by DHCR.

CONCLUSION

Accordingly, it is hereby

ORDERED, that plaintiffs' motion sequence number 002 for renewal is granted; it is further

ORDERED, that defendant's prior motion sequence number 001 to dismiss plaintiff's rent overcharge claims is denied; it is further

ORDERED, that this court's June 21, 2019 decision and order granting defendant's motion to dismiss and directing plaintiff to file his claim with the New York State Division of Housing and Community Renewal, is vacated; it is further

ORDERED, that the case is restored to the Part 23 calendar for a Preliminary Conference; and it is further

ORDERED, that the parties are to appear for a Preliminary Conference in room 307 at 80 Centre Street, New York, New York on September 29, 2019 at 9:30, unless otherwise directed by the court due to the current health crisis.

Any requested relief not expressly addressed by the court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

<u>5/21/2020</u> DATE		<u>W. FRANC PERRY, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE