2022-12-06

Aras v. B-U Realty Corp.

Aras v B-U Realty Corp.
2022 NY Slip Op 34110(U)
December 6, 2022
Supreme Court, New York County
Docket Number: Index No. 161448/2014
Judge: James E. d'Auguste

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **Hon. James d'Auguste** **PART 55**

Justice

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LEISA ARAS, CATHERINE SCHWARTZ, ALBERT PANOZZO, GEORGIA MARANTOS, YU PING TANG, JAMES GLADSTONE, KATHLEEN CAMPANA, PETER KANE, PAULINA PERERA-RIVEROLL, KATHARINE LASELL, JOHN MENAPACE, KAREN MENAPACE,

Plaintiffs,

- v -

B-U REALTY CORP., PAUL BUGONI,

Defendants.

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INDEX NO. 161448/2014

MOTION DATE 10/22/2021

MOTION SEQ. NO. 010

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 010) 341, 342, 343, 347, 348, 349, 350, 351

were read on this motion to/for REARGUMENT/RECONSIDERATION.

In this residential landlord/tenant action, plaintiffs move for leave to reargue (motion sequence number 010) a portion of their earlier motion for summary judgment (motion sequence number 009). The court's prior decision partially disposed of the latter motion. This decision fully disposes of both motions.

BACKGROUND

All plaintiffs are tenants of a residential apartment building located at 945 West End Avenue in the County, City and State of New York (the building). *See* NYSCEF document 280 (amended verified complaint), ¶¶ 2-15. Defendant B-U Realty Corp. is the building's corporate owner, and individual co-defendants, Paul and Irene Bogoni, are officers and principals of B-U (together, defendants). *Id.*, ¶¶ 16-18.

On November 15, 2016, plaintiffs served an amended complaint raising causes of action for: 1) rent overcharge; 2) a preliminary injunction; 3) a stay; 4) harassment; and 5) attorney's fees. *See* Altarac affirmation in opposition (motion sequence number 009), exhibit D (amended verified complaint), ¶¶ 20-45. The current motions concern plaintiffs' claims for rent overcharge (cause of action #1) and attorney's fees/court costs (cause of action #5). The court's August 24, 2021 decision granted plaintiffs' earlier motion to the extent of awarding partial summary judgment on the issue of liability only on the rent overcharge claims of nine of the building's 13 moving plaintiffs (specifically, Leisa Aras, Albert Panozzo & Georgia Marantos, Peter Kane & Paulina Perera-Riveroll, John & Karen Menapace, Sarah Barish-Straus and Patricia Lederer), held the motion in abeyance with respect to the claims of two other plaintiffs (James Gladstone & Kathleen Campana), and denied it with respect to the claims of two final plaintiffs (Robert Arnot & Ellen Hirsch). *See* NYSCEF document 336. The August 24, 2021 decision held in abeyance plaintiffs' request for summary judgment on the issue of damages relating to foregoing rent overcharge claims (cause of action #1) and plaintiffs' claim for attorney's fees and court costs (cause of action #5). *Id.* The August 24, 2021 decision finally directed plaintiffs to produce certain additional materials necessary for the court to complete its calculations with respect to their rent overcharge claims and to render a final decision on their summary judgment motion. *Id.* Plaintiffs' counsel did so in a supplemental submission dated October 12, 2021 (which also offered a modification to the court's calculation methodology). *See* Howard supplemental affirmation. On October 22, 2021, plaintiffs also submitted this motion for leave to reargue the portion of their prior summary judgment motion that pertained to the rent overcharge claims of seven plaintiffs (specifically, Leisa Aras, Peter Kane & Paulina Perera-Riveroll, Robert Arnot & Ellen Hirsch, James Gladstone & Kathleen Campana and Sarah Barish-

Straus). *See* notice of motion (motion sequence number 010). Defendants submitted opposition to that motion on December 9, 2021. *See* Altarac affirmation in opposition (motion sequence number 010). With the receipt of plaintiffs' reply papers, this matter is now fully submitted.

DISCUSSION

For the sake of clarity, this decision will discuss the two instant motions in reverse order.

I. Plaintiffs' Motion to Reargue (motion sequence number 010)

CPLR 2221 ("Motion affecting prior order") provides, in part, as follows:

> "(d) A motion for leave to reargue:
> "1. shall be identified specifically as such;
> "2. shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion; and
> "3. shall be made within thirty days after service of a copy of the order determining the prior motion and written notice of its entry. . .."

Settled appellate precedent holds that leave to reargue pursuant to CPLR 2221 may only be granted upon a showing "'that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision.'" *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 (1st Dept 1992), quoting *Schneider v Solowey*, 141 AD2d 813 (2d Dept 1988). The Appellate Division, First Department, cautions that "a motion for leave to reargue 'is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented.'" *Matter of Anthony J. Carter, DDS, P.C. v Carter*, 81 AD3d 819, 820 (2d Dept 2011); quoting *McGill v Goldman*, 261 AD2d 593, 594 (2d Dept 1999). Here, plaintiffs' motion identifies it as a request for leave to reargue the portion of its earlier motion for summary judgment. Plaintiffs submitted it in a timely fashion on October 22, 2021, which was within the 30-day period after the court's August 24, 2021 decision was entered on September 22, 2021. *See* NYSCEF document 336.

The court will now consider plaintiffs' arguments that it "overlooked or misapprehended" certain matters when it rendered that decision.

Sarah Barish-Straus (apartments 2C and 9D)

The August 24, 2021 decision awarded Barish-Straus summary judgment on the issue of liability on so much of her rent overcharge claim as pertained to her tenancy in apartment 9D, but rejected so much of that claim as was based on her earlier tenancy in apartment 2C. *See* NYSCEF document 336 at 15-18. Plaintiffs' reargument motion asserts that the court erred in disallowing Barish-Straus's rent overcharge claim with respect to apartment 2C. *See* notice of motion (motion sequence number 010), Howard affirmation, ¶¶ 42-49. Counsel specifically asserts that the court "overlooked or misapprehended the . . . undisputed evidence" consisting of (a) Barish-Straus's January 8, 2021 affidavit in support of plaintiffs' summary judgment motion, and (b) defendants' "acknowledgement" of the truth of the statements in her affidavit, as evinced by the building-wide DHCR rent roll that they submitted as an exhibit to their opposition papers to that motion. *Id.* However, as noted, CPLR 2221 (d) (2) only permits a grant of reargument upon a movant's showing that "matters of fact . . . [were] overlooked or misapprehended by the court." Here, the court did not overlook or misapprehend any "matters of fact." Both of the aforementioned pieces of evidence were considered as part of the August 24, 2021 decision, and the court found that they did not constitute sufficient documentary proof of Barish-Straus's tenancy or rent payment history in apartment 2C. *See* NYSCEF document 336 at 15-18. Counsel's argument that the materials are "undisputed" does not alter the fact that he failed to meet his burden of proof with respect to Barish-Straus's tenancy in the unit. As noted, "a motion for leave to reargue 'is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those

originally presented.'" *Matter of Anthony J. Carter, DDS, P.C. v Carter*, 81 AD3d at 820 (citation omitted). Accordingly, the court denies plaintiffs' reargument motion with respect to Barish-Straus.

James Gladstone and Kathleen Campana (apartment 10B)

The August 24, 2021 decision held plaintiffs' summary judgment motion in abeyance with respect to Gladstone's and Campana's rent overcharge claim. *See* NYSCEF document 336 at 40-41. The court found that defendants had *not* committed fraud by treating apartment 10B as deregulated in 2003 when Gladstone and Campana first took possession of it and charging them a market rate rent. *Id.* The decision noted that: (a) the building was not enrolled in the "J-51" real estate tax abatement program between 2000 and 2005, (b) apartment 10B was therefore not rent stabilized by operation of law at that time (*Roberts v Tishman Speyer Props., L.P.*, 62 AD3d 71 [2009], *affd* 13 NY3d 270 [2009]; *Gersten v 56 7th Ave. LLC*, 88 AD3d 189 [1st Dept 2011]), (c) the "high rent/luxury deregulation" procedure set forth in the Rent Stabilization Code (RSC) consequently *was* available and permitted by the Rent Stabilization Law (RSL) at that time (RSL §§ 26-504.1 to 26-504.3, repealed by L.2019, c. 36, pt. D, § 4, eff. June 14, 2019), and (d) deregulation was also available because the rent stabilized tenant who preceded Gladstone and Campana in apartment 10B had vacated the unit (*Matter of 73 Warren St., LLC v State of N.Y. Div. of Hous. & Community Renewal*, 96 AD3d 524 [1st Dept 2012]). *See* NYSCEF document 336 at 6-8, 40-41.

Plaintiffs' motion nevertheless argues that the court "overlooked or misapprehended that defendants' fraudulent scheme lasted over a decade with respect to plaintiffs Gladstone & Campana, and that defendants cannot credibly claim to have followed even pre-*Roberts* guidance." *See* notice of motion (motion sequence 010), Howard affirmation, ¶¶ 8-27. Plaintiffs

particularly rely on the recent decision by the Appellate Division, First Department, in *Montera v KMR Amsterdam LLC* (193 AD3d 102 [1st Dept 2021]) holding that a landlord's persistent failure to re-register as rent stabilized improperly deregulated apartment units in buildings that were enrolled in the "J-51" program is an act of "willful ignorance, which constitutes willful conduct" and also constitutes evidence of a "fraudulent scheme to deregulate" the units. *Id.* At 107. Defendants respond that the August 24, 2021 decision correctly found that 2003 deregulation of apartment 10B was improper, but not fraudulent, and also correctly applied 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]) to determine that this was a "pre-*Roberts*" deregulation in which use of the "default formula" was not justified. *See* Altarac affirmation in opposition, ¶¶ 15-22. Plaintiffs' reply papers merely repeat their original argument. *See* Howard reply affirmation, ¶¶ 3-18. The court finds that plaintiffs' "fraud" argument misreads the caselaw.

There is no doubt the defendants have engaged in a "fraudulent scheme to deregulate the building." As noted in the August 24, 2021, decision, the First Department several years ago confirmed that finding in other litigation. *See* NYSCEF document 336 at 3-4, quoting *Kreisler v B-U Realty Corp.*, 164 AD3d 1117, 1117 (1st Dept 2018), lv dismissed 32 NY3d 1090 (2018). Plaintiffs' current argument that defendants' actions also constitute fraud under the First Department's more recent holding in *Montera v KMR Amsterdam LLC* is based on an oversimplified reading of that holding. *Montera* discussed fraud in two contexts. The First Department first found that fraud - as demonstrated by a landlord's willful neglect to re-register improperly deregulated apartments as rent stabilized in derogation of its obligations to do so pursuant to the *Roberts* and *Gersten* holdings - justified disregarding the four-year "lookback"

limitation set forth in the pre-HSTPA version of RSL § 26-516 in order to determine whether the landlord had also acted fraudulently in setting an apartment's legal regulated rent. *Montera v KMR Amsterdam LLC*, 193 AD3d at 109. The First Department did not consider the issue of the appropriate penalty for a landlord who engaged in the second type of fraud (i.e., illicit rent-setting) because it found an open question of fact as to whether the deregulation at issue in *Montera* was of the inadvertent, pre-*Roberts* variety or whether the landlord had perpetrated it fraudulently. However, the court did consider that issue later that same year in *Casey v Whitehouse Estates, Inc.* (197 AD3d 401 [1st Dept 2021]), wherein it interpreted the Court of Appeals holding in *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal* to permit use of the "default formula" to reset the legal regulated rent of an apartment that had been deregulated fraudulently, but *not* where pre-*Roberts* deregulations took place.[1] *Casey v Whitehouse Estates, Inc.*, 197 AD3d at 403-404, citing *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d at 356-359. This court's August 24, 2021 decision disregarded the four-year lookback rule because of defendants' established fraud, but nevertheless found that their 2003 deregulation of apartment 10B should be deemed a pre-*Roberts* deregulation. The court based that determination on two factors: 1) the building was not enrolled in the "J-51" program in 2003 (and apartment 10B was therefore not rent stabilized as a matter of law); and 2) apartment 10B's previous tenants vacated the unit before Gladstone and Campana took possession of it (and thereby rendered it eligible for deregulation). The evidence of these two factors demonstrates the existence of non-fraudulent

[1] This court did not discuss *Casey v Whitehouse Estates, Inc.* in its August 24, 2021 decision because it was unaware of it at the time. The First Department issued that decision scant weeks before, on August 5, 2021, and it was not entered and available for review until after this court issued its last decision. The court notes that that decision nevertheless comported with the holding of *Casey v Whitehouse Estates, Inc.*

rationales for defendants deregulating apartment 10B. The Court of Appeals reiterated in *Regina* that pre-*Roberts* deregulations should not be deemed "willful" (i.e., fraudulent) because of the possibility that they were based on erroneous guidance from the DHCR that was not corrected until the *Roberts* and *Gersten* decisions were issued in 2009 and 2011, respectively. *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d at 385, n 29. Here, apartment 10B was deregulated in 2003, years before either of those decisions were issued. The fact that defendants engaged in pervasive building-wide fraud in later years does not change the other fact that they had plausibly non-fraudulent justifications for their earlier deregulation of the unit. The court finally finds that the two above factors outweighed the evidence that defendants performed apartment 10B's deregulation improperly by (a) failing to either submit an amended registration statement to the DHCR or (b) failing to attach the various deregulation notices mandated by the RSC to the leases it provided to Gladstone and Campana. Therefore, the court rejects plaintiffs' "fraud argument" as it relates to Gladstone's and Campana's rent overcharge claim and adheres to its former finding. That does not end the inquiry, however.

The August 24, 2021 decision permitted Gladstone's and Campana's claim to stand, in part, out of concern that defendants might have raised the rents on their annual renewal leases by amounts in excess of the "subsequent lawful increases and adjustments" that they were entitled to charge. *See* NYSCEF document 336 at 40-41. However, in the October 12, 2021 supplemental submission that shortly preceded plaintiffs' motion papers, counsel asserted that their "rents are subject to a rent freeze at the default formula rate as a matter of law," and argued that there was no need to include "subsequent lawful increases and adjustments" as part of the rent overcharge calculations. *See* Howard supplemental affirmation, ¶¶ 8-19. Counsel initially

cited a quantity of pre-HSTPA appellate case law to support this argument. *Id.*; *see e.g.*, *Grady v Hessert Realty, L.P.*, 178 AD3d 401, 404 (1st Dept 2019); *Altschuler v Jobman 478/480, LLC*, 135 AD3d 439, 440 (1st Dept 2016); *Matter of Hargrove v Division of Hous. & Community Renewal*, 244 AD2d 241 (1st Dept 1997). Thereafter, in a letter dated December 7, 2021, counsel called the court's attention to the First Department's more recent decision in *Kreisler v B-U Realty Corp.* (198 AD3d 568 [1st Dept 2021])[2] which squarely held that, in the case of any overcharge attributable to a landlord's charging a tenant an improper free market rent, RSL § 26–517 (e) requires that "the overcharge should be calculated from the base date . . . and frozen at that rate." 198 AD3d at 569; *see also Pascaud v B-U Realty Corp*, 2021 NY Slip Op 32362(U) (Sup Ct, NY County 2021). Defendants offered no challenge to this very clear exposition of the law.[3] The court believes that it may have "overlooked or misapprehended" this important First Department precedent when it prepared its own August 24, 2021 decision.[4] Accordingly, the court grants plaintiffs' reargument motion to the extent of modifying its prior decision to remove the requirement that they factor in "subsequent lawful increases and adjustments" to an individual apartment's "base date rent" when they perform their overcharge calculations.[5] In the

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[2] The First Department's decision is dated October 26, 2021, and was entered after this court had issued its August 24, 2021 decision. As a result, the court did not consider the First Department's ruling when it issued its own decision.

[3] Other than to urge the court to disregard plaintiffs' supplemental submission, for procedural reasons that they did not explain. *See* defendants' letter (November 12, 2021), NYSCEF document 344. The court's August 24, 2021 decision specifically directed plaintiffs' counsel to make the supplemental submission. *Id.*, NYSCEF document 336.

[4] The First Department's decision was dated October 26, 2021. *Kreisler v B-U Realty Corp.*, 198 AD3d at 568.

[5] This finding necessarily applies equally to all of the plaintiffs' rent overcharge claims. Accordingly, the court grants plaintiffs' request for leave to reargue their earlier motion for summary judgment and, upon reargument, modifies its August 24, 2012 decision to remove the requirement that any plaintiff's rent overcharge claim factor in "subsequent lawful increases and adjustments" to his/her/their apartment's "base date rent." Fortunately, plaintiffs' counsel did *not* include "subsequent lawful increases and adjustments" to any plaintiff's apartment's base

case of Gladstone and Campana, however, this modification has no effect since the court has determined that there was no demonstrable fraud associated with apartment 10B's 2003 deregulation, and that they therefore did not sustain a rent overcharge. Therefore, the court denies plaintiffs' reargument motion with respect to its prior findings regarding Gladstone and Campana.[6]

Robert Arnot and Ellen Hirsch (apartment 11C)

The August 24, 2021 decision denied plaintiffs' summary judgment request with respect to Arnot's and Hirsch's rent overcharge claim for reasons similar to those that pertained to Gladstone and Campana. *See* NYSCEF document 336 at 15-18. The decision found that defendants had registered apartment 11C as rent controlled from 1984 through 2013 and as rent stabilized when Arnot and Hirsch took possession of it in August of that year. *Id.* It further found that RSC § 2522.3 permitted defendants to charge Arnot and Hirsch a "first rent stabilized rent" in excess of the applicable deregulation threshold subject to their right to file a "fair market rent appeal" (FMRA). *Id.*; *see e.g.*, *Matter of Park v New York State Div. of Hous. & Community Renewal*, 150 AD3d 105 (1st Dept 2017). The decision concluded that their failure to do so in a timely manner precluded them from objecting to the market rate rents that defendants thereafter charged them on their leases, and thereby precluded their rent overcharge claim. *Id.* Plaintiffs' motion argues that the court "overlooked or misapprehended evidence that defendants falsely registered [apartment 11C] as rent-controlled [and that] the Fair Market Rent Appeal process [consequently] does not apply." *See* notice of motion (motion sequence 010), Howard

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date rent in the schedule of overcharge calculations that accompanied his supplemental submission. *See* Howard supplemental affirmation, exhibit A.

[6] The court consequently also denies so much of plaintiffs' earlier motion as sought summary judgment on Gladstone's and Campana's cause of action for rent overcharge.

affirmation, ¶¶ 28-41. Plaintiffs identify that "evidence" as the disparity in the number of rent controlled apartments in the building which defendants recorded on the building-wide DHCR rent roll and the (lower) number of rent controlled units that they reported on their DHCR "maximum base rent" (MBR) reports. *Id.*; see NYSCEF documents 219, 261. However, the court did not "overlook or misapprehend" this evidence in violation of CPLR 2221 (d) (2). Instead, it considered both items when preparing the August 24, 2021 decision (*see* notice of motion [motion sequence number 009], Howard affirmation, exhibits H, XX) and still rejected plaintiffs' contentions. The court notes that, because the MBR reports do not identify which of the building's units defendants claimed to be rent controlled, they offer no proof as to apartment 11C's actual rent regulated status. Plaintiffs thus failed to sustain their burden of proof with respect to their contention that apartment 11C was "was falsely registered as rent controlled" prior to Arnot's and Hirsch's tenancy. It may have been improperly registered as rent controlled while the building was enrolled in the "J-51" program, but it *was* so registered in all annual DHCR filings between 1984 and 2013. As observed, "a motion for leave to reargue 'is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented.'" *Matter of Anthony J. Carter, DDS, P.C. v Carter*, 81 AD3d at 820 (citations omitted). Here, the court already determined that plaintiffs' "evidence" was not probative of their argument. Therefore, the court rejects plaintiffs' reargument motion as regards Arnot's and Hirsch's rent overcharge claim.

Leisa Aras (apartment 11B)

The final branch of plaintiffs' reargument motion asserts that the court's August 24, 2021 decision "overlooked or misapprehended the legal regulated rents in effect for the 'comparable

apartments' for plaintiffs Aras, Kane & Perera-Riveroll and Barish-Straus." *See* notice of motion (motion sequence number 010), Howard affirmation, ¶¶ 50-60. As an initial matter, the court rejects this argument as it applies to Barish-Straus because it has already determined that she is not entitled to summary judgment on her rent overcharge claim against defendants. The court also notes that defendants did not reply to this argument at all in their opposition papers, and that plaintiffs' reply papers assert that defendants have conceded the point. *See* Altarac affirmation in opposition (motion sequence number 010), ¶¶ 1-33; Howard reply affirmation (motion sequence number 010), ¶¶ 34-36. However, that is not sufficient to carry plaintiffs' burden on a motion to reargue.

The August 24, 2021 decision noted that:

> "The Court of Appeals holds that employing the 'default formula' involves 'setting the base date rent as "the lowest rent charged for a rent-stabilized apartment with the same number of rooms in the same building on the relevant base date."' *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d at 354-355, quoting *Thornton v Baron*, 5 NY3d 175, 179-181 and n1 (2005); *Conason v Megan Holding, LLC*, 25 NY3d 1, 9-10 (2015), citing *Thornton v Baron*, 5 NY3d at 179-180 and n1; *see also Casey v Whitehouse Estates, Inc.*, 197 AD3d 401 (1st Dept 2021)."

See NYSCEF document 336 at 37. The decision also determined that apartment 2B's $1,345.16 monthly rent in effect on March 1, 2012 was an appropriate "comparable apartment" base date rent to use when applying the "default formula" to determine apartment 11B's legal regulated rent on the base date. *Id.* at 37-38. Plaintiffs argue that the court "overlooked or misapprehended" the fact that the relevant base date for Aras's overcharge claim was actually February 2012 when she took possession of apartment 11B, rather than March 2012. *See* notice of motion (motion sequence number 010), Howard affirmation, ¶¶ 54-56. Plaintiffs then argue that the appropriate base date rent for Aras's overcharge claim should be the $1,254.73 monthly rent in effect for apartment 2B in February 2012 rather than the $1,345.16 rent charged in March

2012. *Id.* Upon reviewing the subject leases, the court agrees that it inadvertently made a one-month error in fixing apartment 11B's rent by relying on apartment 2B's March 2012 rent rather its February 2012 rent as a reference point for the "default formula." Therefore, the court grants plaintiff's reargument motion to the extent of modifying its August 24, 2012 decision to find that Aras's overcharge claim should be calculated using a legal regulated rent for apartment 11B that is set by reference to apartment 2B's February 2012 rent at $1,254.73 per month.

Peter Kane and Paulina Perera-Riveroll (apartment 10D)

The court cannot make the same finding with respect to the overcharge claim of plaintiffs Peter Kane and Paulina Perera-Riveroll. Plaintiffs' counsel argues that the August 24, 2012 decision "overlooked or misapprehended" the fact that Kane and Perera-Riveroll took possession of apartment 10D in November 2009, and that the court should therefore have used the November 2009 rent of comparable apartment 2D as apartment 10D's legal regulated rent pursuant to the default formula. *See* notice of motion (motion sequence number 010), Howard affirmation, ¶¶ 51-53. However, this argument ignores the Court of Appeals directive that the "default formula" requires setting an apartment's legal regulated rent by reference to "the lowest rent charged for a rent-stabilized apartment with the same number of rooms in the same building *on the relevant base date*.'" *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d at 354-355 (emphasis added). The "relevant base date" plainly refers to the base date of a rent overcharge claim; i.e., four years prior to the filing of a complaint under pre-HSTPA law and six years prior to the filing of a complaint under the HSTPA. RSL § 26-516 (a) (2). The fact that a tenant may have occupied an apartment and been subjected to a rent overcharge for a longer period of time (i.e., greater than four or six years) is irrelevant because the statute limits the amount of time for which a plaintiff can recover damages for a rent

overcharge. This being so, there is no rationale for employing a comparable apartment's "base date rent" that was in effect from *before* the accrual date of a rent overcharge claim in "default formula" calculations. The comparable apartment's "relevant base date" rent is the rent in effect for that unit on the "base date" of the rent overcharge claim. In this case, the base date for plaintiffs' overcharge claims was November 2010 since they filed their complaint in November 2014. As a result, the prior decision properly accepted comparable apartment 2D's November 2010 rent of $1,241.15 per month as apartment 10D's legal regulated rent for "default formula" purposes. Plaintiffs' argument that the court should have used apartment 2D's November 2009 rent instead since Kane and Perera-Riveroll moved into apartment 10D in November of 2009 is erroneous since it would require the court to go outside the applicable claims period. Therefore, the court rejects plaintiffs' argument, and denies so much of their reargument motion as applies to Kane and Perera-Riveroll.

II. Plaintiffs' Motion for Summary Judgement (motion sequence number 009)

Having made the foregoing findings with respect to plaintiffs' reargument motion (motion sequence number 010), the court now returns its attention to their prior summary judgment motion (motion sequence number 009). At this juncture, it would be well to restate some of the court's earlier findings of law and fact.

First, the party seeking summary judgment bears the burden of proving, by competent, admissible evidence, that no material and triable issues of fact exist. *See e.g.*, *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985); *Sokolow, Dunaud, Mercadier & Carreras v Lacher*, 299 AD2d 64, 70 (1st Dept 2002). Once the moving party does so, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action. *See e.g.*,

Zuckerman v City of New York, 49 NY2d 557, 562 (1980); *Pemberton v New York City Tr. Auth.*, 304 AD2d 340, 342 (1st Dept 2003).

Second, the base date of plaintiffs' rent overcharge claims is November 24, 2010 since they commenced this action on November 24, 2014. RSL § 26-516 (a) (2) (pre-HSTPA version, eff. Oct. 9, 2009). Their rent overcharge claims period consequently extends through the same time-frame; i.e., from November 2010 through November 2014. *Id.*

Third, since defendants were found to have engaged in a "fraudulent scheme to deregulate the building," and they have not demonstrated that their actions were not "willful," plaintiffs are entitled to awards of treble damages on their respective rent overcharge claims. RSL § 26-516 (a) (pre-HSTPA version, eff. Oct. 9, 2009); *Kreisler v B-U Realty Corp.*, 164 AD3d at 1117.

Fourth, since plaintiffs' rent overcharge claims are governed by a pre-HSTPA version of RSL § 26-516, their respective treble damages awards are limited to the two-year period prior to the date they interposed those claims; i.e., from November 2012 through November 2014. RSL § 26-516 (a) (2) (i) (pre-HSTPA version, eff. Oct. 9, 2009).

Fifth, as the prevailing parties in this action, plaintiffs are entitled to awards of attorney's fees and court costs. RSL § 26-516 (a) (4) (pre-HSTPA version, eff. Oct. 9, 2009); CPLR 8101; *Hooper Assoc. v AGS Computers*, 74 NY2d 487, 487 (1989).

Sixth, all plaintiffs who prevailed on their rent overcharge claims are also entitled to "interest from the date of the overcharge at the rate of interest payable on a judgment pursuant to section five thousand four of the civil practice law and rules;" i.e., 9%. RSL § 26-516 (a) (4) (pre-HSTPA version, eff. Oct. 9, 2009); CPLR 5004 (a).

Bearing those findings in mind, and taking into account the information contained in

plaintiffs' supplemental submission, the court now addresses the balance of the prior summary judgment motion (motion sequence number 009) which, as noted, involved two of plaintiffs' five causes of action.

1. Plaintiffs' First Cause of Action (Rent Overcharge)

The August 24, 2012 decision granted several plaintiffs partial summary judgment on the issue of liability only on their rent overcharge claims (cause of action #1). This decision makes the following findings on the issue of damages arising from those claims.

Albert Panozzo & Georgia Marantos (apartment 1B)

The August 24, 2012 decision found that Panozzo and Marantos "actual rent payments" totaled $194,979.45 during their portion of the rent overcharge claims period, which began when they took possession of apartment 1B in May 2011 and ended when they stopped paying rent after August 2014. *See* NYSCEF document 336 at 25-27. It also indicated that defendants "actually charged" them a total of $210,557.10 during that time period pursuant to the improper rents set forth on Panozzo's and Marantos's leases.[7] *Id.* This disparity justified a finding that defendants had imposed a rent overcharge in some amount on Panozzo and Marantos. The decision finally accepted apartment 2B's $1,254.73 monthly rent in effect in May 2011 as a "comparable apartment" rent that could be used as apartment 1B's "legal regulated rent" for the purpose of calculating Panozzo's and Marantos's overcharge claim pursuant to the "default formula." *Id.*, at 42-43. This indicated that Panozzo and Marantos should have paid a total of no more than $53,953.39 during the 43 months of the rent overcharge claims period that they

[7] The $210,557.10 in total charges reflects lease charges during the claims period of: 1) 13 months (May 2011 through May 2012) x $4,695.00 per month = $61,035.00; plus 2) 12 months (June 2012 through May 2013) x $4,871.06 per month = $58,452.72; plus 3) 12 months (June 2013 through May 2014) x $4,992.84 per month = $59,914.08; plus 4) 6 months (June 2014 through November 2014) x $5,192.55 per month = $31,155.30.

occupied apartment 1B.[8] The disparity between that amount and the payments that the two plaintiffs actually made justifies a finding that defendants collected a total rent overcharge of $141,026.06 from Panozzo and Marantos. The amount of that overcharge collected during the two-year period immediately preceding the filing of plaintiffs' complaint amounts to $79,475.63 (i.e., $109,589.15 actually paid between November 2012 and November 2014[9] when Panozzo and Marantos should have paid no more than a total of $30,113.52[10] during that time period). Doubling that figure yields a result of $158,951.26. Adding that result to total rent overcharge figure of $141,026.06 yields a total rent overcharge judgment in favor of Panozzo and Marantos of $299,977.32 which includes two years worth of treble damages. As a result, the court grants plaintiffs' summary judgment motion to the extent of awarding Panozzo and Marantos a money judgment in connection with plaintiffs' first cause of action for a violation of RSL § 26-516 in the amount of $299,977.32, together with 9% interest to be calculated from May 12, 2011 when they first took possession of apartment 1B.

John & Karen Menapace (apartment 8A)

The August 24, 2012 decision found that the Menapaces "actual rent payments" totaled $58,884.00[11] during their portion of the rent overcharge claims period, which began when they

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[8] I.e., $1,254.73 in legal rent due each month for 43 months from May 2011 through November 2014.

[9] This figure represents total payments of: 1) $34,097.42 (7 months x $4,871.06 per month from November 2012 through May 2013); plus 2) $59,914.08 (12 months x $4,992.84 per month from June 2013 through May 2014); and 3) $15,577.65 (3 months x $5,192.55 per month from June 2014 through August 2014 when plaintiffs ceased paying rent).

[10] I.e., $1,254.73 per month for the two-year period running from November 2012 through November 2014.

[11] Bogoni acknowledged that the Menapaces made the following rent payments 1) 12 months x $4,200.00 ($50,400.00) from October 2-13 through September 2014; and 2) 2 months x $4,242.00 ($8,484.00) from October 2014 through November 2014. See NYSCEF document 336 at 27-30.

Patricia Lederer (apartment 8D)

The August 24, 2012 decision found that Lederer first took possession of apartment 8D on July 16, 2010, that she still resides there today, and that her "actual rent payments" totaled $160,275.00 during the November 2010-Novenber 2014 rent overcharge claims period.[14] *See* NYSCEF document 336 at 22-25. It also found that her "actual rent charges" during the claims period matched that figure.[15] *Id.* The decision found that apartment 8D's correct "legal regulated rent" was impossible to determine as a result of defendants' fraud, and instead accepted the $1,241.15 monthly rent in effect for apartment 2D in November 2010 as a "comparable apartment" rent to be used in "default formula" calculations. *Id.*, at 27-30, 43-44. Those calculations demonstrate that Lederer should have paid a total of no more than $59,575.20 during the four-year rent overcharge claims period. The disparity between that amount and her actual rent payments discloses that defendants collected a total rent overcharge of $100,699.80 from Lederer during the claims period. The amount of overcharge collected in the two years prior to the filing of the complaint totaled $53,166.25. The court doubles that amount ($106,332.50) and adds it to Lederer's total overcharge ($100,699.80) thus arriving at a figure

[14] The $160,275.00 that Lederer paid in total during the claims period is composed of the following payments: 1) $27,855.00 from November 2010 through July 2011 (9 months x $3,095.00 per month); 2) $38,340.00 from August 2011 through July 2012 (12 months x $3,195.00 per month); 3) $39,540.00 from August 2012 through July 2013 (12 months x $3,295.00 per month); 4) $40,500.00 from August 2013 through July 2014 (12 months x $3,375.00 per month); and 5) $14,040.00 from August 2014 through November 2014 (4 months x $3,510.00 per month). *See* NYSCEF document 336 at 22-25.

[15] Lederer's leases in effect during the rent overcharge claims period ran for the following terms with the following monthly rents: 1) August 2010 through July 2011 @ $3,095.00 per month; 2) August 2011 through July 2012 @ $3,195.00 per month; 3) August 2012 through July 2013 @ $3,295.00 per month; 4) August 2013 through July 2014 @ $3,375.00 per month; and 5) August 2014 through January 2015 @ $3,510.00 per month. *See* NYSCEF document 336 at 22-25.

that incorporates two-years worth, $207,032.30, together with 9% interest to be calculated from the claim's November 24, 2010 base date.

Sarah Barish-Straus (apartment 9D)

As previously discussed, Barish-Straus's overcharge claim is limited to her tenancy in apartment 9D due to plaintiffs' failure to produce competent documentary evidence of her earlier tenancy in apartment 2C. The August 24, 2012 decision found that Barish-Straus resided in apartment 9D between May 1, 2012 through November 10, 2014, and that she made "actual rent payments" of $110,859.00 during that portion of the overcharge claims period.[16] *See* NYSCEF document 336 at 15-18. It also found that her "actual rent charges" during the claims period matched that figure.[17] *Id.* The decision found that apartment 9D's correct "legal regulated rent" was impossible to determine as a result of defendants' fraud, and instead accepted the $1,331.13 monthly rent in effect for apartment 2D in July 2012 as a "comparable apartment" rent to be used in "default formula" calculations. *Id.*, at 15-18, 39-40. Those calculations demonstrate that Lederer should have paid a total of no more than $41,265.03 during the 31 months that she occupied apartment 9D during the overcharge claims period.[18] The disparity between that amount and her actual rent payments discloses that defendants collected a total rent overcharge of $69,593.97 from Barish-Straus during the claims period. During the final two years of the

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[16] Barish Straus's $110,859.00 total actual rent payments were calculated as follows: 1) 12 months (May 1, 2012 through and April 30, 2013) x $3,500.00 per month = $42,000.00; plus 2) 12 months (May 1, 2013 through and April 30, 2014) x $3,570.00 per month = $42,840.00; plus 3) 7 months (May 1, 2014 through and November 30, 2014) x $3,717.00 per month = $26.019.00. *See* NYSCEF document 336 at 15-18.

[17] Barish-Straus's leases for apartment 9D during the overcharge claims period ran for the following terms with the following monthly rents: 1) May 1, 2012 through April 30, 2013 @ $3,500.00 per month; 2) May 1, 2013 through April 30, 2014 @ $3,570.00 per month; and 3) May 1, 2014 through April 30, 2015 @ $3,717.00 per month. *See* NYSCEF document 336 at 15-18.

[18] I.e., 31 months (May 2012 through November 2014) x $1331.13 = $41,265.03.

overcharge claims period, Barish-Straus paid a total of $56,580.75 in rent overcharges.[19] When doubled, the resulting figure is $113,161.50. Adding that amount to Barish-Straus's $69,593.97 base overcharge results in results in a total overcharge award of $182,755.47. Accordingly, the court grants plaintiffs' summary judgment motion to the extent of awarding Barish-Straus a money judgment in connection with plaintiffs' first cause of action for a violation of RSL § 26-516 in the amount of $182,755.47, together with 9% interest to be calculated from May 1, 2012 when she first took possession of apartment 9D.

James Gladstone & Kathleen Campana (apartment 10B)

The August 24, 2012 decision found that "apartment 10B's 'legal regulated rent' was the same as the unit's leased rent on the base date (i.e., $4,963.04 per month)" during the overcharge claims period, and that "[b]ecause Gladstone's and Campana's actual rent payments also matched the leased rent and 'legal regulated rent' amounts, there is no evidence to support their rent overcharge claim." *See* NYSCEF document 336 at 40-41. Earlier in this decision, the court noted the First Department's recent ruling that RSL § 26–517 (e) does not impose a rent freeze prohibiting a landlord from adding "subsequent lawful increases and adjustments" to an apartment's rent where an overcharge may be attributed to the landlord's failure to file annual DHCR registration statements. *Kreisler v B-U Realty Corp.*, 198 AD3d 568. The court also determined that defendants' 2003 deregulation of apartment 10B should be deemed a "pre-

[19] The two-year, November 2012 – November 2014 treble overcharge claims period included the following charges: 1) 6 months (November 1, 2012 through April 30, 2013) x $3,500.00 per month = $21,000.00; plus 2) 12 months (May 1, 2013 through April 30, 2014) x $3,570.00 per month = $ 42,840.00; plus 3) 7 months (May 1, 2014 through November 30, 2014) x $3,717.00 per month = $26,019. Barish-Straus's total charges amounted to $89,859.00. Utilizing a legal regulated rent of $1,331.13 per month, Barish-Straus should only have paid $33,278.25 during that 25 month period. The disparity indicates that Barish-Straus paid a total of $56,580.75 in rent overcharges during the November 2012-November 2014 treble damages calculation period.

Roberts" deregulation attributable to their reliance on incorrect DHCR guidance in effect at that time, and not considered a "willful" or fraudulent act. *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d at 356. As a result, defendants' failure to file DHCR registration statements for apartment 10B did not result in a rent freeze pursuant to RSL § 26–517 (e), and they were permitted to impose "subsequent lawful increases and adjustments" to the rents in Gladstone's and Campana's renewal leases. Pursuant to the *Regina Metropolitan* holding, the fact that they may have done so does *not* constitute a rent overcharge. Accordingly, in the absence of any evidence of a rent overcharge in connection with apartment 10B, the court denies plaintiffs' motion for summary judgment with respect to so much of their first cause of action as pertains to Gladstone and Campana.

Peter Kane & Paulina Perera-Riveroll (apartment 10D)

The August 24, 2012 decision noted that Kane and Perera-Riveroll first took possession of apartment 10D in November 2009, that they occupied the unit during the entire overcharge claims period, and that they still reside there. *See* NYSCEF document 336 at 30-34. The decision found that their total "actual rent payments" during the claims period amounted to $145,959.36,[20] and that their "actual rent charges" matched that figure.[21] *Id.* It also found that

[20] The $145,959.36 in total rent payments that Kane and Perera-Riveroll made during the overcharge claims period were broken down as follows: 1) 12 months (November 1, 2010 through October 31, 2011) x $2,900.00 = $34,800.00; plus 2) 12 months (November 1, 2011 through October 31, 2012) x $2,987.00 per month = $35,844.00; plus 3) 12 months (November 1, 2012 through October 31, 2013) x $3,076.61 per month = $36,919.32; and 4) 12 months (November 1, 2013 through October 31, 2014) x $3,199.67 per month = $38,396.04. *See* NYSCEF document 336 at 30-34.

[21] Kane's and Perera-Riveroll's leases in effect during the overcharge claims period ran for the following terms with the following monthly rents: 1) November 1, 2010 through October 31, 2011 @ $2,900.00 per month; 2) November 1, 2011 through October 31, 2012 @ $2,987.00 per month; 3) November 1, 2012 through October 31, 2013 @ $3,076.61 per month; and 4) November 1, 2013 through October 31, 2014 @ $3,199.67 per month. *See* NYSCEF document 336 at 30-34.

apartment 10D's correct "legal regulated rent" as of November 2010 was unknown as a result of defendants filing fraudulent DHCR registration statements. *Id.* Earlier in this decision, the court reiterated its finding that comparable apartment 2D's November 2010 rent of $1,241.15 per month could be used as apartment 10D's November 2010 legal regulated rent for "default formula" purposes. *Id.* at 44-46 (also, *see* discussion *supra.*). Application of that formula discloses that Kane and Perera-Riveroll should only have paid $59,575.20 in rent during the 2010-2014 overcharge claims period.[22] The disparity between that amount and their actual rent payments indicates that defendants imposed total overcharges of $86,384.16 on Kane and Perera-Riveroll during the claims period. The total overcharges imposed during the November 2012-November 2014 treble damages period amounted to $45,527.76.[23] Doubling that figure ($91,055.52) and adding it to the base overcharge amount ($86,384.16) indicates that Kane and Perera-Riveroll are entitled to a total award of $177,439.68. Accordingly, the court grants plaintiffs' summary judgment motion to the extent of awarding Kane and Perera-Riveroll a money judgment in connection with plaintiffs' first cause of action for a violation of RSL § 26-516 in the amount of $177,439.68, together with 9% interest to be calculated from the November 24, 2010 base date.

Leisa Aras (apartment 11B)

The August 24, 2012 decision found that Aras first took possession of apartment 11B in February 2012 and that she resided there through January 2015. *See* NYSCEF document 336 at 9-13. Plaintiffs' supplemental submission establishes that she made "actual rent payments" of

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[22] I.e., $1241.15 x 48 months.

[23] I.e., $36,919.32 charged between November 2012 and October 2013 and $38,396.04 charged between November 2013 and October 2014 (with no payment specified for November 2014) less the $29,787.60 in legal regulated rent that Kane and Perera-Riveroll should have paid during that 24-month period yields a total figure of $45,527.76 from which to calculate treble damages.

$148,100.00 during the portion of the overcharge claims period that coincided with her tenancy in the unit.[24] *See* Howard supplemental affirmation, exhibit A. The leases reviewed in connection with the August 24, 2012 decision establish that her "actual rent charges" during the claims period tracked Aras's payments until April 2014, when she began making monthly payments of $2,200.00 pursuant to a stipulation she had executed with Bogoni to settle separate litigation.[25] *See* NYSCEF document 336 at 9-13. The August 24, 2012 decision finally found that apartment 11B's correct legal regulated rent at the inception of Aras's tenancy could not be determined as a result of defendants' fraud. *Id.* at 35-38. Earlier in this decision, the court determined that apartment 2B's February 2012 $1,254.73 rent should be used as apartment 11B's "legal regulated rent" for the purpose of "default formula" calculations. Using that figure establishes that Aras should have paid a total of $42,660.82 during the 34 months of the overcharge claims period that coincided with her tenancy in apartment 11B. The disparity between that amount and the $148,100.00 that she actually paid indicates that Aras sustained total rent overcharges of $105,439.18 during the claims period. She sustained $24,420.00 of those charges during the last two years of the claims period.[26] Doubling that amount

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[24] Aras's total of $148,100.00 in rent actually paid during the claims period was calculated as follows: 1) 12 months (February 2012 through January 2013) x $4,950.00 per month = $59,400.00; plus 2) 12 months (February 2013 through January 2014) x $5,050.00 per month = $60,600.00; plus 3) 2 months (February and March 2014) x $5,250.00 per month = $10,500.00; and 4) 8 months (April through November 2014) x $2,200.00 per month = $17,600.00. *See* NYSCEF document 336 at 9-13.

[25] The leases in effect for apartment 11B during Aras's portion of the overcharge claims period ran for the following terms with the following monthly rents: 1) February 1, 2012 through January 31, 2013 @ $4,950.00 per month; 2) February 1, 2013 through January 31, 2014 @ $5,050.00 per month; and 3) February 1, 2014 through January 31, 2015 @ $5,250.00 per month. *See* NYSCEF document 336 at 9-13.

[26] $127,970.00 in actual rent charges (3 months x $4,950.00 plus 12 months x $5,050.00 plus 10 months x $5,252.00) less $103,550.00 in actual rent payments (3 months x $4,950.00 plus 12 months x $5,050.00 plus 2 months x $5,250.00 plus 8 months x $22,00.00) results in $24,420.00 in rent overcharges sustained between November 2012 and November 2014.

($48,840.00) and adding it to the $105,439.18 base amount yields a total overcharge award (including treble damages) of $154,279.18. Accordingly, the court grants plaintiffs' summary judgment motion to the extent of awarding Aras a money judgment in connection with plaintiffs' first cause of action for a violation of RSL § 26-516 in the amount of $154,279.18, together with 9% interest to be calculated from February 1, 2012 when she took possession of apartment 11B.

Robert Arnot & Ellen Hirsch (apartment 11C)

The August 24, 2012 decision denied plaintiffs' motion for summary judgment on so much of the first cause of action as applied to Arnot and Hirsch. *See* NYSCEF document 336 at 38. This decision denied plaintiffs' request for leave to reargue so much of their summary judgment motion as pertained to Arnot's and Hirsch's rent overcharge claim for the reasons discussed *supra*. As a result, the court adheres to its earlier ruling denying plaintiffs' request for partial summary judgment on behalf of Arnot and Hirsch.

2. Plaintiffs' Fifth Cause of Action (Court Costs/Attorney's Fees)

Plaintiffs' fifth cause of action seeks awards of attorney's fees and court costs. *See* NYSCEF document 280 (amended verified complaint), ¶¶ 43-45. The court's August 24, 2012 decision noted that a prevailing party is entitled to collect attorney's fees where an award is authorized by statute and that the pre-HSTPA version of RSL § 26-516 (a) (4) authorizes such an award. *See* NYSCEF document 336 at 48-50, citing *Hooper Assoc. v AGS Computers*, 74 NY2d at 487; *Sykes v RFD Third Ave. I Assoc., LLC*, 39 AD3d 279, 279 (1st Dept 2007). The court now also notes that CPLR 8101 provides that "[t]he party in whose favor a judgment is entered is entitled to costs in the action . . .." Here, plaintiffs are clearly the "prevailing parties" with respect to their rent overcharge claims and the court has ruled that money judgments should be entered in favor of a number of them. As a result, the court also finds that plaintiffs are entitled

to awards of attorney's fees and court costs as a matter of law. Accordingly, the court grants so much of plaintiffs motion as seeks summary judgment on their fifth cause of action on the issue of liability only, and submits the issue of the calculation of damages in connection with that claim to a Special Referee to hear and determine.

3. Remaining Claims

Neither of plaintiffs' motions raised any argument with respect to their second, third or fourth causes of action, nor did defendants cross move to dismiss those claims. Accordingly, the court finds that said claims remain unaddressed and makes no findings with respect to any of them at this juncture.

ACCORDINGLY, for the foregoing reasons, it is hereby

ORDERED that the motion, pursuant to CPLR 2221, of plaintiffs Leisa Aras, Albert Panozzo, Georgia Marantos, James Gladstone, Kathleen Campana, Peter Kane, Paulina Perera-Riveroll, John and Karen Menapace, Robert Arnot, Ellen Hirsch, Sarah Barish-Straus and Patricia Lederer (motion sequence number 010) for leave to reargue their motion for summary judgment (motion sequence number 009) is granted in part and denied in part; and it is further

ORDERED that, upon reargument, the court modifies its prior order, dated August 24, 2012 (motion sequence number 009) to the extent of:

1. removing the requirement that plaintiffs' rent overcharge claims factor in "subsequent lawful increases and adjustments" to their respective apartments' "base date rents"; and
2. directing that the rent overcharge claim of plaintiff Leisa Aras be calculated using a "legal regulated rent" for apartment 11B of $1,254.73 per month; and it is further

ORDERED that the motion, pursuant to CPLR 3212, of plaintiffs Leisa Aras, Albert Panozzo, Georgia Marantos, James Gladstone, Kathleen Campana, Peter Kane, Paulina Perera-Riveroll, John and Karen Menapace, Robert Arnot, Ellen Hirsch, Sarah Barish-Straus and

Patricia Lederer (motion sequence number 009) for summary judgment on their first cause of action (rent overcharge) is denied with respect to the claims of plaintiffs James Gladstone, Kathleen Campana, Robert Arnot and Ellen Hirsch, but is granted with respect to the other plaintiffs' claims; and it is further

ORDERED that the Clerk of the Court is directed to enter the following money judgments in favor of the following plaintiffs and against the defendants B-U Realty Corp., Paul Bogoni and Irene Bogoni:

1. a money judgment in favor of plaintiffs Albert Panozzo and Georgia Marantos and against defendants in the amount of $299,977.32 together with interest calculated at a rate of 9% from May 12, 2011 forward;
2. a money judgment in favor of plaintiffs John Menapace and Karen Menapace and against defendants in the amount of $120,744.54 together with interest calculated at a rate of 9% from October 1, 2013 forward;
3. a money judgment in favor of plaintiff Patricia Lederer and against defendants in the amount of $209,514.60 together with interest calculated at a rate of 9% from November 24, 2010 forward;
4. a money judgment in favor of plaintiff Sarah Barish-Straus and against defendants in the amount of $182,755.47 together with interest calculated at a rate of 9% from May 1, 2012 forward;
5. a money judgment in favor of plaintiffs Peter Kane and Paulina Perera-Riveroll and against defendants in the amount of $177,439.68 together with interest calculated at a rate of 9% from November 24, 2010 forward; and
6. a money judgment in favor of plaintiff Leisa Aras and against defendants in the amount of $154,279.18 together with interest calculated at a rate of 9% from February 1, 2012 forward; and it is further

ORDERED that the motion, pursuant to CPLR 3212, of plaintiffs Leisa Aras, Albert Panozzo, Georgia Marantos, James Gladstone, Kathleen Campana, Peter Kane, Paulina Perera-Riveroll, John and Karen Menapace, Robert Arnot, Ellen Hirsch, Sarah Barish-Straus and Patricia Lederer (motion sequence number 009) for summary judgment on their fifth cause of action (court costs and attorney's fees) is granted solely on the issue of liability, and the issue of the calculation of damages pertaining to that claim is hereby submitted to a Judicial Hearing Officer ("JHO") or Special Referee to hear and determine; and it is further

ORDERED that that matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and determine as specified above; and it is further

ORDERED that the balance of this action shall continue.

This constitutes the decision and order of the Court.

12/6/2022
DATE

James d'Auguste, J.S.C.

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