2023-05-15

West Side Marquis LLC v. Moret

Civil Court of the City of New York
County of New York, Part G, Room 581

Index # **LT-302615-20/NY**

West Side Marquis LLC

Petitioner(s)

-against-

Ronald Moret Jr

Respondent(s)

Decision / Order

(seq 3)

Recitation, as required by CPLR 2219(a), of the papers considered in the review of Respondent's motion seeking summary judgment pursuant to CPLR §3212 on his first objection in point of law and third affirmative defense, and setting a hearing on Respondent's counterclaim for rent overcharge:

Papers	Numbered
Notice of Motion and Affidavit/Affirmation & Exhibits Annexed	23-31
Answering Affidavit/Affirmation & Exhibits	32-45
Reply Affirmation & Memo of Law	46-47

Upon the foregoing cited papers, the Decision/Order on the Respondent's motion is granted for the following reasons:

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 leave the Mitchell-Lama program and adjust rents to a first 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). Ronald Moret Sr, Respondent's father, was a signatory to the WSM Agreement and passed away May 26, 2017 (the "Tenant of Record" or "TOR")

Respondent is the successor, remaining family member, of the Tenant of Record. The TOR's last renewal lease expired August 31, 2018, after his death. He was charged the ACR of $856.59. The LRR of $2420.57 was stated in the lease and a preferential rent rider related to the WSM agreement was annexed.[1]

On June 14, 2019, the Housing Stability and Tenant Protection Act (HSTPA) became law with immediate effect. 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. This change ended landlords' ability 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)

In January 2020, Respondent was offered a first successor lease in the amount of $2636.83, representing the LRR plus guidelines increases, for a period of one-year, April 1, 2020 through March 31, 2021. (NYSCEF 30). Respondent signed the lease. In August 2020, Petitioner demanded overdue rent at the LRR rate for the months of April 2020 through August 2020 for a total of $13,184.15. Respondent did not pay and Petitioner commenced this proceeding by Petition and Notice of Petition seeking rent owed through September 2020 in the amount of $15,547.98.

Respondent answered through Counsel on September 10, 2022. Respondent alleges the Rent Demand is fatally defective as the first objection in point of law; raises four affirmative defenses: first - partial or full

[1] The Court notes the Preferential Rent Rider provided by Petitioner (NYSCEF 39) reflects a one-year rent, and the 2018-2020 lease, also provided by Petitioner (NYSCEF 38), was for two years.

payment of the rent demanded, second - petitioner is not entitled to a possessory judgment due to the Tenant Safe Harbor Act, third - upon the passage of the HSTPA preferential rents, such as the ACR, became the legal rents for the units as a matter of law, and fourth - breach of warranty of habitability; and three counterclaims: (1) for an order to correct breach of warranty of habitability, (2) for a judgment based on breach of warranty- breach of warranty of habitability, and (3) for a judgment based on overcharge.[2]

DECISION and ORDER:

Respondent now seeks summary judgment on its first objection in point of law and third affirmative defense and, if granted, a hearing on its third counterclaim for rent overcharge. In support, Respondent cites this Court's prior decision in West Side Marquis v De Jourdan 2022 WL 3370663, 2022 N.Y. Slip Op. 32707(U) (NY Cty Civ.Ct. Housing Part, Hon. Daniele Chinea). Respondent argues that, like in De Jourdan, the succession lease offered after passage of the HSTPA must be offered at the ACR, not the LRR, due to the newly instituted requirement that renewal leases be offered based upon the rent charged in the prior lease, plus guidelines increases. Here, Ronald Moret Sr was charged $856.59 per month, but Respondent's initial rent was $2636.83, an increase in excess of the rent guidelines in place at the time.[3]

In opposition, Petitioner argues that the decision in De Jourdan was poorly reasoned and incorrect.[4]

Petitioner argues that the Court incorrectly concluded in De Jourdan that "DHCR Has No Specific Authority To Set Rents In Regulated Apartments." In support of its position, Petitioner cites RSL § 26-513, titled "Application for adjustment of initial rent" and argues that "it provides, in relevant part, as follows: 'a. The tenant or owner of a housing accommodation made subject to this law by the emergency tenant protection act of nineteen seventy-four may, within sixty days of the local effective date of this section or the commencement of the first tenancy thereafter, whichever is later, file with the commissioner an application for adjustment of the initial legal regulated rent for such housing accommodation. *The commissioner may adjust such initial legal regulated rent upon a finding that the presence of unique or peculiar circumstances materially affecting the initial legal regulated rent has resulted in a rent which is substantially different from the rents generally prevailing in the same area for substantially similar housing accommodations.*' (emphasis added)."

The law Petitioner relies upon makes this Court's point. The law relates to ***applications*** filed with DHCR, i.e. is the Owner entitled to a rent adjustment, for DHCR to determine. The Court's point in De Jourdan was not that DHCR has no role in the setting of rents; it was that when DHCR sets a rent it does so as a result of a

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[2] This Counter Claim is repeated as Counter Claim 4.

[3] 1.5% for one-year leases commencing on or after October 1, 2019 and on or before September 31, 2020.

[4] Upon information and belief, Petitioner has appealed this Court's decision in West Side Marquis v De Jourdan 2022 WL 3370663, 2022 N.Y. Slip Op. 32707(U) (NY Cty Civ.Ct. Housing Part, Hon. Daniele Chinea).

controversy and decides it on the merits, with due process. An agreement to settle a dispute, such as the WSM Agreement, is not decided on the merits, but by the parties in lieu of a determination on the merits. Thus, a settlement ratified by DHCR, such as the WSM Agreement, is more akin to a so-ordered stipulation of settlement in a Housing Part matter than an increase authorized by law. A statute supersedes the dictates of a private agreement.

Petitioner also argues that the HSTPA applies only to *tenant* renewals entered into on or after the effective date of the HSTPA. Petitioner argues, "[a]s is clear from the express wording of §26-511(14), and DHCR Fact Sheet #40, this section was enacted to protect 'tenants' who were paying a preferential rent on June 14, 2019. RSC [N.Y. Comp. Codes R. & Regs. tit. 9] § 2520.6(d) defines 'Tenant' to be: 'Any person or persons named on a lease as lessee or lessees, or who is or are a party or parties to a rental agreement and obligated to pay rent for the use or occupancy of a housing accommodation.' It is undisputed that on June 14, 2019 when the HSTPA became effective, Respondent was not a person named on a lease, was not a party to a rental agreement and was not obligated to pay to Petitioner rent for the use and occupancy of the Apartment. As such, upon the effective date of the HSTPA, Respondent was not a 'tenant' as defined by the RSC."

A successor tenant signs a renewal lease, not a vacancy lease. The Rent Stabilization Code states: "[u]nless otherwise prohibited by occupancy restrictions based upon income limitations pursuant to federal, state or local law, regulations or other requirements of governmental agencies, if an offer is made to the tenant pursuant to the provisions of subdivision (a) of this section and such tenant has permanently vacated the housing accommodation, any member of such tenant's family, as defined in section 2520.6(o) of this Title, who has resided with the tenant in the housing accommodation as a primary residence for a period of no less than two years, or where such person is a "senior citizen," or a "disabled person" as defined in paragraph (4) of this subdivision, for a period of no less than one year, immediately prior to the permanent vacating of the housing accommodation by the tenant, or from the inception of the tenancy or commencement of the relationship, if for less than such periods, ***shall be entitled to be named as a tenant on the renewal lease***. 9 NYCRR 2523.5(b)(1) (emphasis added). Thus, the successor renews on the terms and conditions as their predecessor, including the ACR.

Petitioner also argues that retroactive application of HSTPA to the WSM Agreement is an unconstitutional retroactive application of the law, citing Regina Metro. Co., LLC v. New York State Div. of Hous. & Cmty. Renewal. Id, 35 N.Y.3d 332, 154 N.E.3d 972, *reargument denied sub nom. Raden v. W7879, L_LC, 35 N.Y.3d 1079, 154 N.E.3d 12 (2020), and reargument denied sub nom. Taylor v. 72A Realty Assocs., L.P., 35 N.Y.3d 1081, 154 N.E.3d 14 (2020)*. This argument is unpersuasive. The Court is not applying the HSTPA retroactively to the WSM Agreement, but prospectively to a renewal lease offered after the effective date of the HSTPA.

Petitioner also argues that the facts here are distinguishable from those in De Jourdan. Per Petitioner, in De Jourdan the Court focused on Petitioner's argument that a DHCR ratified agreement, such as the WSM Agreement, is an increase "authorized by law," and not whether the rent charged in an executed lease is the correct legal regulated rent - the issue here. The issues are not different. In both cases, the issue is: when setting a rent in a succession lease, what controls - the WSM Agreement or the HSTPA. Here, as in De Jourdan, the Court finds the HSTPA controls.

Petitioner argues that this Court is bound by Jones v DHCR and West Side Marquis LLC, Index No. 153066/2022 (N.Y. Co. October 12, 2022), an Order of the Supreme Court which reversed the DHCR after De Jourdan. In the underlying decision, DHCR also had found that the HSTPA supersedes the WSM Agreement and the landlord must charge successors the ACR, not the LRR. The Supreme Court disagreed. A copy of the decision is not annexed to the Opposition. Though Petitioner claims Jones was based upon the same facts presented herein, Respondent was not a party to that case. The Court declines, on this record, to find that the Jones decision has any res judicata or collateral estoppel effect on this case or the issues presented herein.

Finally, Petitioner argues that Respondent's application for ERAP at the current lease rate waived his ability to challenge the current lease rate. The Court rejects this argument. Mainly, as already stated herein, neither tenants nor landlords subject to the Rent Stabilization Law and Code can waive applicability of its rights or obligations. Also, because Respondent was obligated to apply for ERAP with his existing lease, Respondent had no way of applying for anything less than the rent set by Petitioner. Petitioner is welcomed to return any overpayment to the Office of Temporary and Disability Assistance upon determination of the correct monthly rent and any overcharge assessed.

The Court hereby affirms its analysis in De Jourdan, and grants Respondent's motion in full. Respondent is granted summary judgment on its first objection in point of law and third affirmative defense. The Petition is dismissed. The rent demand is defective as it sues for an improper rent.

The case is restored to the Part G calendar for a hearing on Respondent's claim of overcharge. The hearing is set for 7/10/23 at 2:30PM in Part G, Room 581. Any further motions shall be made returnable on or before the date and time set by the Court. If the parties reach settlement in advance of the hearing date, they may submit a stipulation for settlement on NYSCEF and send a courtesy notice to the Court at NY-HOUSING-581@nycourts.gov.

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

SO ORDERED
DANIELE CHINEA
JUDGE, HOUSING COURT

Date: May 15, 2023

Judge of the Civil Court