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Collazo v. Netherland Prop. Assets LLC

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2020 NY Slip Op 02128 [35 NY3d 987]

April 2, 2020

Court of Appeals

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[*1]

Daniel Collazo et al., Appellants,
v
Netherland Property Assets LLC et al., Respondents.

Argued January 7, 2020; decided April 2, 2020

Collazo v Netherland Prop. Assets LLC, 155 AD3d 538, modified.

APPEARANCES OF COUNSEL

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Rosenberg & Estis, P.C., New York City (*Jeffrey Turkel* of counsel), for Rent Stabilization Association of NYC, Inc., and another, amici curiae.

Jeanette Zelhof, *Mobilization for Justice*, New York City (*Evan Denerstein* and *Carolyn E. Coffey* of counsel), and *CAMBA Legal Services, Inc*., Brooklyn (*Matthew Schedler* of counsel), for Brooklyn Bar Association Volunteer Lawyers Project and others, amici curiae.

Letitia James, Attorney General, New York City (*Ester Murdukhayeva, Barbara D. Underwood* and *Steven C. Wu* of counsel), for New York State Division of Housing and

Community Renewal and another, amici curiae.

Newman Ferrara LLP, New York City (*Roger Sachar, Lucas A. Ferrara* and *Jarred I. Kassenoff* of counsel), for Lawrence Chaifetz and others, amici curiae.

{**35 NY3d at 989} OPINION OF THE COURT

Memorandum.

The order of the Appellate Division should be modified, without costs, in accordance with this memorandum and as so modified affirmed.

Plaintiffs are 30 current or former tenants of 18 apartments in a building currently owned and operated by defendants. The building is subject to the Rent Stabilization Law. From 1990-2016, defendants and their predecessors received J-51 tax benefits pursuant to Administrative Code of City of NY § 11-243. Nevertheless, 15 of the apartments at issue were registered as permanently exempt, high rent vacancies—i.e., were deregulated—during that time period (*see* Rent Stabilization Law of 1969 [Administrative Code of City of NY] former § 26-504.2 [a]). Following guidance issued by the New York State Division of Housing and Community Renewal (DHCR) in 2016, defendants reregistered the 15 apartments as rent-stabilized.

Plaintiffs commenced this action in 2016, seeking a declaration that their apartments are subject to rent stabilization laws, and recovery for overcharges, treble damages and attorney's{**35 NY3d at 990} fees, as well as damages pursuant to General Business Law § 349. Plaintiffs averred that, following the issuance of this Court's decision in *Roberts v Tishman Speyer Props., L.P.* (13 NY3d 270 [2009]), defendants knew, or reasonably should have known, that high rent vacancy deregulation was not available with respect to apartments in buildings for which a landlord was receiving J-51 benefits. Plaintiffs also alleged that defendants violated General Business Law § 349 by engaging in deceptive, consumer-oriented acts—namely, representing to the public at large that the apartments in question were exempt from rent regulation.

[*2]In lieu of answering, defendants moved to dismiss the complaint. They sought dismissal of the General Business Law cause of action for failure to state a claim upon which relief could be granted, and dismissal of the remaining claims on the ground that DHCR had primary jurisdiction over those claims and they should be reviewed in that forum. Supreme Court granted defendants' motion (2017 NY Slip Op 31709[U] [Sup Ct, NY County 2017]), and the Appellate Division affirmed (155 AD3d 538 [1st Dept 2017]). This Court thereafter

granted plaintiffs leave to appeal (31 NY3d 910 [2018]).

[1] Initially, we reject defendants' arguments regarding the inapplicability to the primary jurisdiction issue raised on this appeal of the provisions of the Housing Stability and Tenant Protection Act of 2019 that relate to the enforcement of certain claims and state that "[t]he courts and [DHCR] shall have concurrent jurisdiction, subject to the tenant's choice of forum" (L 2019, ch 36, § 1, part F, §§ 1, 3, amending Emergency Tenant Protection Act of 1974 [L 1974, ch 576, § 4] § 12 [a] [1] [f]; [b] [McKinney's Uncons Laws of NY § 8632 (a) (1) (f); (b)]). Here, plaintiffs' choice of forum controls and these claims should be adjudicated in Supreme Court.

[2] Turning to plaintiffs' General Business Law claim, section 349 prohibits "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state" (General Business Law § 349 [a]). We have held that this statute "cannot fairly be understood to mean that everyone who acts unlawfully, and does not admit the transgression, is being 'deceptive' " within the meaning of section 349 (*Schlessinger v Valspar Corp.*, 21 NY3d 166, 172 [2013]). For purposes of this appeal, we assume without deciding that a claim may lie under General Business Law § 349 based upon a landlord's alleged misrepresentation to the public {**35 NY3d at 991} that an apartment was exempt from rent regulation following deregulation in violation of the Rent Stabilization Law. Here, however, plaintiffs alleged only that defendants failed to admit that they violated the Rent Stabilization Law in deregulating plaintiffs' apartments—three of which were, in fact, never deregulated—rather than any affirmative conduct that would tend to deceive consumers. Inasmuch as plaintiffs failed to allege more than "bare legal conclusions" (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 141 [2017] [internal quotation marks omitted]) regarding the existence of consumer-oriented, deceptive acts (*see generally Oswego Laborers' Local 214 Pension Fund v Marine Midland Bank*, 85 NY2d 20, 24-25 [1995]), their General Business Law claim was properly dismissed.

Rivera, J. (dissenting in part). I agree with the majority that under the Housing Stability and Tenant Protection Act of 2019, which applies here, "plaintiffs' choice of forum controls," meaning their claims must be adjudicated in Supreme Court (majority mem at 990 L 2019, ch 36, § 1, part F, §§ 1, 3, amending Emergency Tenant Protection Act of 1974 [L 1974, ch 576, § 4] § 12 [a] [1] [f]; [b] [McKinney's Uncons Laws of NY § 8632 (a) (1) (f); (b)]). However, I part ways with the majority's consideration of plaintiffs' claim under section 349 of the General Business Law.

To state a claim under General Business Law § 349 a plaintiff must allege that the defendant engaged in consumer-oriented conduct that is materially misleading and that caused the plaintiff to suffer injury (*City of New York v Smokes-Spirits.Com, Inc.*, 12 NY3d 616, 621 [2009]). The courts below dismissed plaintiffs' complaint based on their erroneous understanding that conduct between a landlord and tenant is inherently "private" rather than consumer-oriented in nature (2017 NY Slip Op 31709[U], *3 [Sup Ct, NY County 2017], *affd* 155 AD3d 538 [1st Dept 2017], citing *Aguaiza v Vantage Props., LLC*, 69 AD3d 422, 423 [1st Dept 2010]). We have never endorsed such a per se [*3]rule—as to the real estate industry or any other. Indeed, the blanket approach espoused below is contrary to General Business Law § 349 and not supported by our case law.

In the landlord-tenant context, as elsewhere, a party may assert a claim under General Business Law § 349 based upon a landlord's alleged consumer-oriented misrepresentations. As we confirmed in *Schlessinger v Valspar Corp.* (21 NY3d 166 {**35 NY3d at 992} [2013]), General Business Law § 349 does not apply to every improper action, but only to "conduct that tends to deceive consumers" (*id.* at 172). In a proper case, nothing prevents a plaintiff from asserting a claim based on a misrepresentation that an apartment was exempt from rent regulation following deregulation in violation of the Rent Stabilization Law: section 349 contemplates that a cause of action under that section may overlap with other statutory prohibitions and remedies (*see* General Business Law § 349 [g] ["This section shall apply to all deceptive acts or practices declared to be unlawful, whether or not subject to any other law of this state"]; *Riordan v Nationwide Mut. Fire Ins. Co.*, 977 F2d 47, 52 [2d Cir 1992]).

I see no need to go further. In my view, whether plaintiffs' complaint alleges consumer-oriented deception within the scope of General Business Law § 349 under our established liberal pleading standards should be decided by Supreme Court in the first instance (*see Leon v Martinez*, 84 NY2d 83, 87-88 [1994]; *cf. Matter of Red Hook/Gowanus Chamber of Commerce v New York City Bd. of Stds. & Appeals*, 5 NY3d 452, 461-462 [2005]).

Chief Judge DiFiore and Judges Stein, Fahey, Garcia, Wilson and Feinman concur; Judge Rivera dissents in part in an opinion.

Order modified, without costs, in accordance with the memorandum herein and, as so modified, affirmed.