2023-05-12

# 5763 WADSWORTH LLC v. ROQUE

NEW YORK CITY CIVIL COURT
COUNTY OF NEW YORK: PART C
----------X
5763 WADSWORTH LLC,

Petitioner - Landlords,

v.

STEPHANIE O. ROQUE,
WILKIN HERNANDEZ,

Respondent – Tenants.
----------X

DECISION AND ORDER

L&T 063456/19

TRAVIS J. ARRINDELL, J.:

Recitation, as required by CPLR §2219(A), of the papers considered in the review of Respondent's OSC to Vacate the Stipulation of Settlement and Petitioners Cross-Motion to execute on the warrant:

| Papers | Numbered |
|---|---|
| Respondent's OSC (Numbered 21-34 on NYSCEF) ..... | 1 |
| Petitioner's Cross-Motion and Opposition (Numbered 3-16, 35-48 on NYSCEF)..... | 2 |

---

TRAVIS J. ARRINDELL, J.:

After review of the papers, Respondent's OSC seeking to vacate the stipulation of settlement is granted. "While a stipulation is essentially a contract and should not be lightly set aside, the court possesses the discretionary authority to relieve parties from the consequences of a stipulation 'if it appears that the stipulation was entered into [inadvisedly] or that it would be inequitable to hold the parties to it.'"[1] In Tabek, 2015 N.Y. Misc. LEXIS 3281, *1, the court held that the unrepresented tenant demonstrated a "potentially meritorious rent overcharge claim, which should not be deemed forfeited by her uncounseled decision to consent to a judgment." Additionally, in 2701 Grand Assn. LLC v Morel, 2016 N.Y. Misc. LEXIS 434, the court vacated a pro-se stipulation of settlement when the tenant provided "documentary evidence showing an arguably meritorious rent overcharge claim."[2] Here, it is undisputed that Respondent at the time they entered in the stipulation of settlement were unrepresented. Now with counsel Respondent has provided documented evidence of a potentially meritorious claim for rent overcharge.

The Housing Stability and Tenant Protection Act of 2019 (HSTPA) was enacted providing that a court "shall consider all available rent history" to determine the legal regulated rent for the purposes of determining an overcharge.[3] Prior to the HSTPA's enactment, overcharge claims were limited to the four-year period preceding the filing of the overcharge

---

[1] See Tabak Assoc., LLC v Vargas, 2015 N.Y. Misc. LEXIS 3281, *1, (internal citations omitted).
[2] See also 9 NYCRR 2205.1(a).
[3] See L 2019, ch 36, § 1, part F, § 7.

complaint, unless the tenant produced evidence of a fraudulent scheme to deregulate.[4] However, shortly after the passage of the HSTPA, the Court of Appeals decided Matter of Regina Metro Co. LLC v. New York State Div. of Housing & Community Renewal, (35 NY3d 332, 363 [2020]), holding that "the overcharge calculation amendments [in the HSPTA] cannot be applied retroactively to overcharges that occurred prior to their enactment." The result of this decision is that the pre-HSTPA law governs overcharge disputes as alleged in this case. Specifically, Respondent would have to allege a fraudulent scheme to go beyond the four-year look back period.

"Generally, an increase in the rent alone will not be sufficient to establish a 'colorable claim of fraud,' and a mere allegation of fraud alone, without more, will not be sufficient to require DHCR to inquire further. What is required is evidence of a landlord's fraudulent deregulation scheme to remove an apartment from the protections of rent stabilization."[5] In Breen v 330 E 50th Partners, LP, 154 AD3d 583, the Appellate Division First Department held "neither the sizeable increase in the apartment rent…, based in part on apartment improvements, nor plaintiff's mere skepticism about the quality or extent of those improvements, were sufficient to establish a colorable claim of fraud."[6] Furthermore, "it is clear from Boyd that the use of potentially inflated base rent, flowing from an overcharge predating the limitations of the lookback period, was proper in the absence of fraud."[7] However, in Butterworth v 281 St. Nicholas Partners, LLC, 160 A.D.3d 434, the Appellate Division First Department found that an increase in the rent at the same time the landlords "ceased filing the annual registration" can sustain a finding of fraud."

Unlike Breen, 154 AD3d 583, and more similar to Butterworth, 160 A.D.3d 434, Respondent here alleges unexplained increases of rent, and Petitioner ceasing to file the annual registrations of the premises. According to the Division of Housing and Community Renewal's (DHCR) rent registration for Respondent's apartment, Petitioner filed on November 28, 2016, the 2015's annual registration, providing a lease renewal to Joseph Leroy for the one year term between December 2014 and November 2015, a regulated amount of $1,565.16. Petitioner then fails to register any rents for years 2016 and 2017. Subsequently, Petitioner files 2018's registration stating that the regulated rent was now $3,000.00, a 91.67% increase to the rent, which is substantially higher than the allowable 20% increase providing for a maximum legal rent of $1,878.19.[8] Petitioner's 2018's registration fails to indicate any individual apartment improvement (IAI) increases, but states only a lease vacancy increase was taken. Then, Petitioner again fails to file any registration for the year 2019 – 2021. Not only has Respondent shown an unexplained increase with subsequent failures to register, but Petitioner failed to provide Respondent the required lease rider as required by the Rent Stabilization Law.[9] Sufficient indices of fraud exist, therefore, Respondent has demonstrated a meritorious claim of an overcharge. Even if Respondent failed to show indicia of fraud, most of the alleged failures occurred within

---

[4] See Matter of Grimm v State of NY Div. of Hous. & Community Renewal Off. of Rent Admin., 15 NY3d 358 (2010).

[5] Id.; See also, Boyd vs New York State Div of Housing and Community Renewal, 23 NY3d 999 (2014).

[6] See Spatz v Valle, 63 Misc. 3d 134[A] (App Term, 1st Dept 2019) ("The increase in the rent prior to the look-back period, based upon a certain 2004 vacancy increase allowance and an MCI increase, that tenant now claims was unauthorized, does not establish a colorable claim of fraud") (internal citations omitted).

[7] See Matter of Regina, 35 NY3d at 358.

[8] See DHCR Fact Sheet # 26.

[9] See NYC Rent Stabilization Code § 2522.5(c).

the four year lookback period, which does not require Respondent to allege a fraudulent scheme to claim a rent overcharge.[10] Respondent first raised its overcharge defense in their OSC dated December 6, 2019. Having alleged the rent overcharge on December 6, 2019, the four year lookback would begin December 2015. All if not most of the alleged objectionable conduct occurred within the lookback period. The Court notes that the annual 2015 registration of Joseph Leroy's rent was not filed until November 28, 2016, placing that filing within the lookback period.

In response, Petitioner admits that they failed to annually register the subject premises as required by the RSL. They now attempt to demonstrate that there exist no indicia of fraud or a rent overcharge. They attempt to show this by providing documents showing an unreported IAI. They also include purported leases of the unreported tenancies. However, Petitioner failed to lay the evidentiary foundation of these documents and Respondent would have the opportunity to challenge their admission and authenticity at a hearing. Respondent need only show that they have a "potentially meritorious rent overcharge claim."[11]

**Conclusion**

Based on the foregoing, Respondent's motion to vacate the stipulations of settlement is granted. The judgment and warrant are hereby vacated. Consequently, Petitioner's Cross-motion is denied in its entirety. This matter is adjourned to July 11, 2023, at 9:30 AM for all purposes.

This constitutes the decision and order of the court.

Dated: May 12, 2023
New York, New York

TRAVIS J. ARRINDELL
JHC

[10] See Matter of Grimm v State of NY Div. of Hous. & Community Renewal Off. of Rent Admin., 15 NY3d 358 (2010).
[11] See Tabak Assoc., LLC v Vargas, 2015 N.Y. Misc. LEXIS 3281, *1, (internal citations omitted); See also 2701 Grand Assn. LLC v Morel, 2016 N.Y. Misc. LEXIS 434.