2023-10-05

Michael Minick LLC v. Jones

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK **PART** 11M

Justice

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THE MICHAEL MINICK LLC,

Plaintiff,

- v -

KAITLIN JONES, JOHN DOE, JANE DOE

Defendant.

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INDEX NO. 157032/2022

MOTION DATE 05/25/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73

were read on this motion to/for DISMISSAL.

Plaintiff The Michael Minick LLC (the owner) is the owner of a building located at 440 West 22nd Street in Manhattan (the Building). The owner alleges that by Standard Form of Apartment Lease, dated July 22, 2021 (the Lease), he leased Apartment 2F in the building (the Apartment) to defendant Kaitlin Jones (Jones) for a one-year term beginning on August 1, 2021.

Pursuant to a Lease Expiration Notice & Notice of Non-Renewal, dated April 29, 2022, the owner reminded Jones that the Lease was set to expire on July 31, 2022, informed her that no renewal lease would be offered, and advised that Jones must vacate the Apartment on or before the expiration of the Lease. The Owner alleges that despite the fact that the expiration date passed, Jones failed to vacate the Apartment and remains as a holdover tenant, wrongly asserting that the Apartment is rent stabilized and that she is entitled to a renewal lease.

On August 17, 2022, the owner commenced this action to recover damages for breach of the Lease, to recover possession of the Apartment, use and occupancy, ongoing damages, legal

fees, and expenses. The owner also seeks a declaration that the Apartment is not subject to rent stabilization.

In lieu of answering, Jones moved to dismiss the complaint pursuant to CPLR 3211 (a) (1) and (a) (5), arguing that the Apartment is subject to rent stabilization and, as such, there is no legal basis for terminating her tenancy or for seeking any of the remedies demanded in the complaint. Jones contends that the owner received tax benefits under New York City's J-51 tax abatement program from July 1, 1995, through June 30, 2019. Therefore, the Apartment, which was subject to rent regulation at the time the owner began receiving such benefits, remained subject to rent regulation for as long as the J-51 benefits were in force pursuant to *Roberts v Tishman Speyer Props., L.P.* (13 NY3d 270 [2009]). Jones asserts that on June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA) repealed the high-rent vacancy deregulation provisions of the Rent Stabilization Law (RSL [Administrative Code of City of NY]) § 26-504.2. Since the owner's J-51 benefits did not expire until June 30, 2019, that avenue of deregulation was no longer available to the owner and therefore the Apartment remains subject to rent stabilization.

The owner opposed the motion to dismiss and filed an amended complaint. He also cross-moved to convert the motion to dismiss to a motion for summary judgment dismissing the amended complaint pursuant to CPLR 3211 (c), and for summary judgment on the amended complaint pursuant to CPLR 3212 (a). The owner alleges that the Apartment is not subject to rent stabilization and therefore Jones is not entitled to a renewal lease. Rather, Jones is a holdover occupant without any legal right to remain in possession of the Apartment.

In arguing that the Apartment is not subject to rent stabilization, the owner asserts that the rent-controlled tenant occupying the Apartment when the owner began receiving J-51 benefits

died in 1998. The tenant's estate surrendered the Apartment on August 1, 1998. The owner contends, therefore, that on that date, the Apartment was subject to vacancy decontrol pursuant to the New York City Rent and Rehabilitation Law (Rent Control Law, hereinafter RCL) (Administrative Code of City of NY) ' 26-403 (e) (2) (i) (9). He further contends that when the J-51 benefits expired, the Apartment was vacant and therefore automatically subject to deregulation under RSL § 26-504 (c), which was not amended or repealed by the HSTPA and, according to the owner, remained a viable pathway to deregulation when the J-51 benefits expired.

DISCUSSION

As an initial matter, while the motion and cross-motion were pending, Jones submitted an answer and does not oppose the owner's request to convert her motion to dismiss into a motion for summary judgment dismissing the amended complaint. Since the record contains an answer and it appears that both parties have laid bare their proof and chosen to deliberately chart a summary judgment course, the court will grant the request to convert the motion (*see generally Shah v Shah*, 215 AD2d 287, 289 [1st Dept 1995]).

On a motion for summary judgment, the facts must be viewed in the light most favorable to the non-moving party (*see Bill Birds, Inc. v Stein Law Firm, P.C.*, 35 NY3d 173, 179 [2020]; *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). The movant "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Trustees of Columbia Univ. in the City of N.Y. v D'Agostino Supermarkets, Inc.*, 36 NY3d 69, 73-74 [2020] [internal quotation marks and citations omitted]). If the moving party fails to make such a showing, the motion must be denied "regardless of the sufficiency of the opposing papers" (*Alvarez v Prospect Hosp.*, 68

NY2d 320, 324 [1986]; *see Matter of New York City Asbestos Litig.*, 176 AD3d 506, 506 [1st Dept 2019]). Where "the moving party proffers the required evidence, the burden shifts to the nonmoving party to establish the existence of material issues of fact which require a trial of the action" (*Trustees of Columbia Univ. in the City of N.Y. v D'Agostino Supermarkets, Inc.*, 36 NY3d at 74 [internal quotation marks and citations omitted]).

For the reasons that follow, the court finds that Jones met her burden of tendering sufficient evidence to demonstrate that the Apartment is rent stabilized. In opposition, the owner fails to raise an issue of fact requiring a trial. Therefore, Jones's motion is granted, the amended complaint is dismissed, and the owner's cross-motion insofar as it seeks summary judgment on the amended complaint is denied.

By way of background, New York "City's J-51 program, authorized by Real Property Tax Law § 489, allows property owners who complete eligible projects to receive tax exemptions and/or abatements that continue for a period of years" (*Roberts v Tishman Speyer Props., L.P.*, 13 NY3d at 280). "In exchange for receiving such benefits, the landlords subject their properties to the RSL. Accordingly, units not otherwise subject to rent stabilization become rent stabilized" (*Gersten v 56 7th Ave. LLC*, 88 AD3d 189, 194 [1st Dept 2011][internal citations omitted]).

In 2009, the Court of Appeals held in *Roberts v Tishman Speyer Props., L.P.* that deregulation is not available with respect to apartments in buildings for which a landlord is receiving J-51 benefits (*Roberts v Tishman Speyer Props., L.P.*, 13 NY3d at 285-287; *see Matter of Bramwell v New York State Div. of Hous. & Community Rene*wal, 147 AD3d 556, 557 [1st Dept 2017]). In other words, an apartment cannot be removed from rent stabilization during the receipt of such benefits. In 2011, the Appellate Division, First Department determined that

Roberts had retroactive effect (*Gersten v 56 7th Ave. LLC*, 88 AD3d at 198). As such, the owner in the instant matter could not lawfully deregulate the Apartment while receiving J-51 tax benefits from July 1, 1995, through June 30, 2019.

It is undisputed that a rent-controlled tenant was living in the Apartment when the owner began receiving J-51 benefits. The rent-controlled tenant died in April 1998 and his estate surrendered the Apartment on August 1, 1998. RCL § 26-403 (e) (2) (i) (9) provides that rent control shall not apply to housing accommodations which became vacant by voluntary surrender on or after June 30, 1971. As such, when the estate surrendered the Apartment on August 1, 1998, rent control no longer applied and the Apartment would have become subject to the rent stabilization regime by operation of law, regardless of the owner's receipt of J-51 benefits (*see Liggett v Lew Realty LLC*, 211 AD3d 473, 475 [1st Dept 2022]; *Goldfeder v Cenpark Realty LLC*, 187 AD3d 572, 572-573 [1st Dept 2020]; *Matter of Park v New York State Div. of Hous. & Community Renewal,* 150 AD3d 105, [1st Dept 2017]; *see also Matter of 230 East 48th Street LLC*, DHCR Admin Review Docket No. FV410037RO at 4-5 [September 28, 2018]["the apartment became vacancy decontrolled and converted to a rent stabilized apartment when the rent-controlled tenant vacated in August 1999 after the J-51 benefits had commenced, *which is not precluded or affected by the receipt of J-51 tax benefits*. After converting to rent stabilized status as a result of the rent-controlled tenant vacating the apartment, the subject apartment continued to remain rent stabilized for the remainder of the time the building was receiving J-51 benefits . . . . As a result, the subject apartment was not rent stabilized solely due to the receipt of J-51 benefits"][emphasis added]).

The expiration of the J-51 benefits did not occur until June 30, 2019. Under *Roberts*, the Apartment was not eligible for deregulation until that date. The HSTPA repealed high rent

vacancy deregulation as of June 14, 2019 (*see* L 2019, ch 39, § 1, part Q, § 10; *see Matter of 160 E. 84th St. Assoc. LLC v New York State Div. of Hous. & Community Renewal*, 205 AD3d 635, 636 [1st Dept 2022]). Therefore, Jones correctly argues that high rent vacancy deregulation, upon which the owner relies to assert that the Apartment is no longer rent stabilized, was unavailable when his J-51 benefits expired.

The owner does not dispute that the HSTPA repealed high rent vacancy deregulation as of June 14, 2019. He contends that the HSTPA is irrelevant here because he is not attempting to utilize any of the methods for deregulation *after* they were revoked by the HSTPA. Rather, it is undisputed that the Apartment exceeded the deregulation threshold over 21 years prior to the effective date of the HSTPA, when the first tenant took occupancy of the Apartment on August 1, 1998, at a rental rate in excess of the deregulation threshold in effect at the time. The owner contends that at that moment, he would have been able to deregulate the Apartment. As such, the Apartment was no longer subject to rent stabilization but for the receipt of J-51 benefits.

The owner asserts that when the J-51 benefits expired, the apartment then automatically became deregulated pursuant to a method that was not revoked by the HSTPA, that being deregulation pursuant to RSL § 26-504 (c). RSL § 26-504 (c) provides, in part:

> "*Upon the expiration or termination for any reason of [J-51] benefits [,] any such dwelling unit shall be subject to this chapter until the occurrence of the first vacancy of such unit after such benefits are no longer being received* or if each lease and renewal thereof for such unit for the tenant in residence at the time of the expiration of the tax benefit period has included a notice in at least twelve point type informing such tenant that the unit shall become subject to deregulation upon the expiration of such tax benefit period and states the approximate date on which such tax benefit period is scheduled to

> expire, such dwelling unit shall be deregulated as of the end of the tax benefit period; *provided, however, that if such dwelling unit would have been subject to this chapter . . . in the absence of this subdivision, such dwelling unit shall, upon the expiration of such benefits, continue to be subject to this chapter . . . to the same extent and in the same manner as if this subdivision had never applied thereto*."

(emphasis added).

The owner contends that the Apartment was vacant on June 30, 2019, the day the J-51 benefits expired. Therefore, pursuant to RSL § 26-504 (c), the "first vacancy of such unit" occurred on that date. As such, the Apartment was no longer subject to rent stabilization on June 30, 2019. He argues that since the HSTPA did not repeal or amend RSL § 26-504 (c), it still provides a pathway to automatic deregulation upon the expiration of J-51 benefits. Therefore, the Apartment is clearly no longer subject to the rent stabilization regime.

Jones does not dispute that the Apartment was vacant as of June 30, 2019. She argues, however, that the applicable part of RSL § 26-504 (c) is not the section upon which the owner relies, but instead the section which states:

> "if such dwelling unit would have been subject to this chapter . . . in the absence of this subdivision, such dwelling unit shall, upon the expiration of such benefits, continue to be subject to this chapter . . . to the same extent and in the same manner as if this subdivision had never applied thereto."

According to Jones, this means that if the building was already regulated when the owner began receiving J-51 benefits, it continues to be regulated upon expiration of the J-51 benefits under the same regulations that applied prior to their receipt. She contends that what happened

during the receipt of J-51 benefits (i.e. - July 1, 1995, through June 30, 2019) is inconsequential because regulatory status is determined by an examination of two points only -- the status of the apartment when the building first began receiving J-51 benefits and whether there is a basis for deregulation on the date the benefits expire.

Jones's interpretation of the phrase "to the same extent and in the same manner as if this subdivision had never applied thereto" is consistent with case law from the First Department holding that under RSL § 26-504 (c) "'a building that is already regulated when it receives J-51 benefits will continue to be regulated under the original rent-regulation scheme when the tax benefits expire'" (*Matter of Bramwell v New York State Div. of Hous. & Community Renewal*, 147 AD3d 556, 556 [1st Dept 2017], quoting *Matter of Schiffren v Lawlor*, 101 AD3d 456, 457 [1st Dept 2012]; *see Matter of 73 Warren St., LLC v State of N.Y. Div. of Hous. & Community Renewal*, 96 AD3d 524, 572 [2012]). Once the building reverts to its pre-J51 status, the owner *then* has the right to seek deregulation (*see Matter of Schiffren v Lawlor*, 101 AD3d 456, 457 [1st Dept 2012]; *see Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d 332, 361, n13 [2020] ["Under the law in place before the HSTPA, . . . [n]othing in the statutory scheme would have precluded the owner from pursuing luxury deregulation after J-51 benefits expired"]).

The owner, however, disagrees with this interpretation. He asserts that the language "to the same extent and in the same manner as if this subdivision had never applied thereto" requires deregulation as there is no dispute that but for his receipt of J-51 benefits, the Apartment would have been deregulated prior to June 14, 2019. The owner urges that the language of RSL § 26-504 (c), in particular the phrase "to the same extent and in the same manner as if this subdivision had never applied thereto," plainly provides that deregulation is mandated whenever an

apartment would not have been rent stabilized but for the building's enrollment in the J-51 program.

The owner highlights that he is not disputing that "as a general matter, RSL § 26-504 (c) requires that units subject to regulation prior to the receipt of J-51 benefits remain regulated after the expiration of J-51 benefits" (Mem of Law at 13, NYSCEF Doc. No. 46). He contends that: "The question before the Court is whether units that become subject to high rent vacancy deregulation and that 'would have been' deregulated long ago but for the J-51 benefits are not locked into rent stabilization because high rent vacancy deregulation has since been repealed" by the HSTPA (*id.*). The owner asserts that "[w]hile it is true that the [HSTPA] prospectively eliminated [this method of deregulation], the Apartment was already [deregulated] in 1998, when it was still lawfully permissible" (Reply Mem at 9, NYSCEF Doc. No. 53). However, under *Roberts*, deregulation was not lawfully permissible at that time.

The interpretation of RSL § 26-504 (c) urged by the owner was recently rejected by the Honorable Robert R. Reed in *Stuyvesant Town — Peter Cooper Vil. Tenants' Assn. v BPP ST Owner LLC* (78 Misc 3d 309 [Sup Ct, NY Co 2023]). In that case, Justice Reed concluded:

> "BPP . . . asserts that . . . the portion of RSL §26-504 (c) which states that 'if [a] dwelling unit would have been subject to [rent stabilization] . . . in the absence of this subdivision, such dwelling unit shall, upon the expiration of [J-51] benefits, continue to be subject to [the RSL] . . . to the same extent and in the same manner as if this subdivision had never applied thereto.' BPP's argument appears to take the final portion of the last sentence ('as if this subdivision had never applied thereto') out of context to support the assertion that deregulation is mandated whenever an apartment 'would not have been' rent stabilized but for its' building's enrollment in the J-51 program. This assertion ignores

> the text of RSL §26-504 (c). The statute recognizes that a building's enrollment in the 'J-51' real estate tax abatement program will render its apartments rent stabilized as a matter of law for the duration of the building's enrollment, but provides that any units which were rent stabilized before said enrollment shall remain rent stabilized after the enrollment period ends (*see Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d 332, 361 [2020]; *Matter of Bramwell v New York State Div. of Hous. & Community Renewal*, 147 AD3d 556, 556 [1st Dept 2017]; *Matter of Schiffren v Lawlor*, 101 AD3d 456, 457 [1st Dept 2012]). The sentence fragment that BPP cites simply refers to the statute's recognition of the rent-stabilizing effect of J-51 enrollment. It does not imply the existence of an automatic deregulation mandate that goes into effect upon the expiration of enrollment. The permissible circumstances for deregulation were set forth in RSL §§26-504.1, 26-504.2 and 26-504.3, all of which were repealed by the HSTPA on June 14, 2019. RSL §26-504 (c) itself does not concern deregulation"

(*Stuyvesant Town — Peter Cooper Vil. Tenants' Assn. v BPP ST Owner LLC*, 78 Misc 3d at 317).

The owner argues that Justice Reed's conclusion is based upon the misconception that the HSTPA amended RSL § 26-504 (c), when in fact, it did not. And, even assuming arguendo that the HSTPA amended section 26-504 (c), the amendment should not be applied retroactively. Contrary to the owner's argument, Justice Reed did not conclude that the HSTPA repealed or amended RSL § 26-504 (c). Rather, Justice Reed concluded, and this court agrees, that the same sentence fragment relied upon by the owner here – i.e., "as if this subdivision had never applied thereto" – does not provide a mechanism for deregulation of units that were subject to regulation

before a building's enrollment in the J-51 program. Consistent with binding case law, those units revert to their prior regulated status. The HSTPA did not amend this framework. Rather, it repealed the available legal avenues for the subsequent deregulation of such units which are not set forth in section 26-504 (c), but in other sections of the RSL.

Lastly, the court notes that the New York State Division of Housing and Community Renewal (DHCR), responsible for administering the administers the J-51 program in the City of New York, has adopted this interpretation of RSL § 26-504 (c). In this regard, DHCR has ruled that units subject to regulation prior to the receipt of J-51 benefits are considered subject to regulation "for reasons other than the receipt of J-51 benefits" and therefore "pursuant to controlling law and notwithstanding any prior DHCR PAR determinations, the [now repealed] high income rent deregulation provisions were applicable after the expiration of the J-51 tax benefits," not the requirements pertaining to the "automatic deregulation of an apartment" upon the expiration of the J-51 tax benefits set forth in RSL § 26-504 (c) (*Matter of 230 East 48th Street LLC*, DHCR Admin Review Docket No. FV410037RO, at 4-5 [September 28, 2018]; *see also Matter of BLDG Management Co., Inc.*, DHCR Admin Review Docket No. FW410013RO, at 4-5 [February 12, 2019]; *Matter of Cenpark Realty LLC*, DHCR Admin Review Docket No. ER410042RO, at 5-6 [January 18, 2019]; *Matter of Morrow*, DHCR Admin Review Docket No. EM410034RT, at 5-6 [July 25, 2018]). As such, the DHCR determination advanced by the owner, to the extent it sets forth a contrary interpretation of RSL § 26-504 (c) (*Matter of Lubin*, DHCR Admin Review Docket No. BU410033RT [August 5, 2014]), is not only inconsistent with the case law, but also inconsistent with DHCR's current policy.

In light of the foregoing, the court concludes that the Apartment became vacancy decontrolled as of August 1, 1998, after the J-51 tax benefits commenced. It then continued to

be rent stabilized during the remaining time the J-51 tax benefits were in effect. When the J-51 benefits expired on June 30, 2019, the Apartment reverted to its original rent-regulated status. In this case, the Apartment could not revert to rent control given that it became rent stabilized by operation of law when rent-control tenant vacated. Therefore, the only regulatory status it could revert to was rent stabilization. However, the avenues that would have been available to the owner for destabilization were already repealed by the HSTPA and thus no longer available. As such, the Apartment was rent stabilized when the defendant became a tenant and she is therefore entitled to summary judgment dismissing the amended complaint and to a declaration in her favor (*see 200 Genesee St. Corp. v. City of Utica,* 6 NY3d 761, 762 [2006]; *Lanza v Wagner*, 11 NY2d 317, 334 [1962]; *Punch Fashion, LLC v Merchant Factors Corp.*, 180 AD3d 520, 524 [1st Dept 2020]).

The owner maintains that this is an unfair and punitive result. While the court is mindful of the impact, the result is nevertheless consistent with the purpose of the HSTPA, which was enacted to "alleviate a pressing affordable housing shortage" (*Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d at 385). If the statute has caused unintended consequences, it is up to the Legislature to correct it (*see generally People v Golo*, 26 NY3d 358, 362 [2015]).

As a final matter, Jones asserts a counterclaim for attorneys' fees under Real Property Law § 234. However, she did not move for judgment on her counterclaim and her entitlement to attorneys' fees was not briefed by the parties.

CONCLUSION

Accordingly, it is hereby

ORDERED that defendant's motion for summary judgment dismissing the amended complaint is granted, and the amended complaint is dismissed; and it is further

ORDERED that plaintiff's cross-motion for summary judgment on the amended complaint is denied; and it is further

ADJUDGED AND DECLARED that Apartment 2F located at 440 West 22nd Street in the borough of Manhattan is subject to rent stabilization.

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10/5/2023
DATE

LYLE E. FRANK, J.S.C.

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