

Georgia Properties v Dalsimer
2006 NY Slip Op 30505(U)
January 9, 2006
Supreme Court, New York County
Docket Number: 112539/04
Judge: Barbara R. Kapnick
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: BARBARA R. KAPNICK

Justice

PART 12

0112539/2004

GEORGIA PROPERTIES
VS
DALSIMER, KATHERINE

SEQ 1

DISMISS ACTION

INDEX NO.

0112539/04

MOTION DATE

MOTION SEQ. NO.

001

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH
ACCOMPANYING MEMORANDUM DECISION**

FILED

JAN 18 2006

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 1/9/06

BARBARA R. KAPNICK s.c.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 12

-----X
GEORGIA PROPERTIES,

Plaintiff,

-against-

KATHERINE DALSIMER,

Defendant.

DECISION/ORDER
Index No. 112539/04
Motion Seq. No. 001

-----X
BARBARA R. KAPNICK, J.:

Plaintiff Georgia Properties, as owner of the building located at 275 Central Park West, and Dr. Robert Liebert, as tenant, entered into a lease dated October 14, 1969 for Apartment 19A. There is no dispute that Apartment 19A was subject to the Rent Control Law.

Plaintiff and Dr. Liebert also entered into a lease dated June 5, 1978 and subsequent renewals for Apartment 18D, which was subject to the Rent Stabilization Law, but is not physically connected to Apartment 19A.

Defendant Katherine Dalsimer, who married Dr. Liebert in 1979, became the successor tenant of both apartments when he died in 1988. There is no real dispute that Apartment 18D, where defendant continues to reside with her current husband, Peter Pouncy, has always been used exclusively for residential purposes.

There is also no dispute that Apartment 19A has been used by defendant as an office for her therapy practice. Defendant also concedes that she leased a portion of that apartment to

another therapist, although she claims that the sublease was "with the full knowledge and consent of the landlord". However, defendant claims that she also continued to use Apartment 19A for residential purposes, and specifically claims that her children used some of the rooms in Apartment 19A 'at times' as bedrooms. Defendant further claims that she and her family considered Apartment 19A to be part of a two-apartment family residence.

In early 2000, the landlord filed a luxury deregulation proceeding with the State of New York Division of Housing and Community Renewal ("DHCR") seeking deregulation of Apartment 18D on the ground that the rent for the apartment exceeded \$2,000.00 per month and the income of the occupants exceeded \$175,000.00 per year (see, Admin. Code of the City of N.Y. § 26-504.3). Defendant denied that her income exceeded \$175,000.00 and thus argued that the apartment was not subject to luxury deregulation.

While the luxury deregulation proceeding was pending before the DHCR, plaintiff commenced a summary holdover proceeding against defendant in the Civil Court seeking to recover possession of Apartment 19A on the ground that it was not her primary residence and that it was being used solely for business purposes. Defendant denied that the apartment was being used solely for business purposes, and argued that Apartment 19A was part of her combined primary residence.

After extensive settlement negotiations, the parties, who were both represented by counsel, resolved the DHCR proceeding and the holdover proceeding pursuant to Stipulation of Settlement dated

December 7, 2000,¹ which was so-ordered by Housing Court Judge Michelle Schreiber. Defendant acknowledged in the Stipulation that "she has no succession rights" to Apartment 19A and admitted that said apartment "became vacancy decontrolled upon either the death of Robert Lieber or the permanent vacatur of the premises by Dana Liebert", one of defendant's daughters who allegedly maintained a bedroom in the apartment.

The parties further agreed that the landlord would be entitled to a vacancy decontrol of Apartment 19A and that plaintiff and defendant would enter into a fair market lease for that apartment.

In addition, the Stipulation provided that

[f]or the valuable consideration set forth above, and in consideration of Respondent Katherine Dalsimer entering into a non-stabilized vacancy office lease [for Apartment 19A] on the terms and conditions set forth herein above, Petitioner agrees to refrain and forebear in perpetuity from making an application to the New York State Division of Housing and Community Renewal and any successor agency thereto, to deregulate apartment 18D by reason of high income rent deregulation. In addition, Petitioner hereby discontinues with prejudice the pending Petition for high income rent deregulation under DHCR Docket Number OD-410011-LD.

Plaintiff and defendant, thereafter, entered into a new lease agreement dated December 1, 2000 for Apartment 19A for a term of eight years ending on December 31, 2008.

¹ While the parties continuously refer to the Stipulation of Settlement as a "Consent Judgment", this Court prefers to refer to it as the Stipulation.

Plaintiff seeks in this action a judgment declaring that the Stipulation of Settlement is void and is of no force and effect and, therefore, vacating the Stipulation on the ground that it violates sections 2525.3(b) and 2520.13 of the Rent Stabilization Code ("RSC") and is contrary to public policy, and declaring the 19A Lease void.

RSC § 2525.3(b) provides as follows:

No owner or other person shall require a tenant, prospective tenant or a prospective permanent tenant to represent or agree as a condition of renting a housing accommodation that the housing accommodation shall not be used as the tenant's or prospective tenant's primary residence, or the prospective permanent tenant's principal residence.

RSC § 2520.13 provides, in relevant part, as follows:

An agreement by the tenant to waive the benefit of any provision of the RSL or this Code is void; provided, however, that based upon a negotiated settlement between the parties and with the approval of the DHCR, or a court of competent jurisdiction, or where a tenant is represented by counsel, a tenant may withdraw, with prejudice, any complaint pending before the DHCR ...

Defendant now moves for an order dismissing the complaint on the grounds that plaintiff has failed to state a cause of action with respect to Apartment 19A based upon the Rent Stabilization Code since (i) Apartment 19A was subject to the Rent Control Law, not the RSC, and (ii) the Stipulation merely granted the landlord the relief it sought and would have obtained with respect to Apartment 19A had it prevailed in the holdover proceeding; namely, deregulation of the apartment on the ground that the apartment was

no longer being used by defendant or her family for residential purposes.

The defendant also moves to dismiss the complaint for failure to state a cause of action with respect to Apartment 18D. Specifically, defendant argues that (i) Section 2525.3 does not apply since Apartment 18D continues to be used as defendant's primary residence and plaintiff has never claimed otherwise, and (ii) Section 2520.13 which voids an agreement by the tenant to waive any provision of the RSL or RSC does not apply because the landlord merely agreed not to file a petition for high income deregulation, as plaintiff would have been permitted, but not obligated, to do. See, RSC § 2531.3 which provides that "the owner may file an owner's petition for deregulation." (emphasis supplied).²

Plaintiff contends that the Stipulation of Settlement violates the rent stabilization scheme because the defendant-tenant "waived her rights to occupy Apartment 19A as a residential apartment." (See, Draper v. Georgia Properties, Inc., 94 N.Y.2d 809, 811 [1999], involving the same landlord, which held that RSC

² Defendant also moves to dismiss the Complaint on the ground that this application should have been brought before Judge Schreiber since it seeks to vacate her prior judgment (see, CPLR § 2221). However, this action seeks declaratory relief based on considerations of public policy which fall outside the jurisdiction of the Housing Court. Therefore, defendant's motion must be denied on that ground.

§§ 2525.3(b) and 2520.13 "bar a landlord from securing a lease on the condition of a tenant's acquiescence in a representation of non-primary residence usage") and because plaintiff-landlord waived its right in perpetuity to apply to deregulate Apartment 18D "by reason of high income rent deregulation."

In addition, plaintiff argues that the Stipulation as a whole violates the Rent Stabilization Code, even if this Court finds that none of the cited provisions apply to Apartment 19A.

There is no dispute that Apartment 19A was always subject to rent control and not rent stabilization. Therefore, this Court finds that the Complaint fails to state of cause of action under the RSC with respect to Apartment 19A.

The Court further finds that the landlord's agreement not to pursue the luxury deregulation of Apartment 18D does not frustrate the goal of the Rent Stabilization Code which is to ensure "an adequate supply of affordable housing" (390 West End Associates v. Harel, 298 A.D.2d 11, 16 [1st Dep't 2002]).

To the contrary, the Stipulation in this case has the effect of keeping an apartment which might otherwise have been deregulated within the regulatory scheme. This case can, thus, be distinguished from 390 West End Associates v. Harel, supra, and Thornton v. Baron, 5 N.Y.3d 175 (2005) in which the courts have prohibited both


landlords and tenants from entering into private agreements which have the effect of deregulating units and removing affordable housing from the market.

Accordingly, based on the papers submitted and the oral argument held on the record on March 23, 2005, defendant's motion to dismiss this action is granted.

The Clerk may enter judgment dismissing plaintiff's Complaint with prejudice and without costs or disbursements.

This constitutes the decision and order of this Court.

Dated: January 9, 2006


Barbara R. Kapnick
J.S.C.

BARBARA R. KAPNICK
J.S.C.

FILED
JAN 18 2006
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NEW YORK