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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: LEHNER / EDWARD H. LEHNER Justice

PART 19

CENTURY REALTY, INC.

INDEX NO. 115724/96

MOTION DATE

- v -

MOTION SEQ. NO. 03

RICHARD HYATT, ET AL.

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
JUN 30 2006
NEW YORK
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: JUN 26 2006

J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 19

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CENTURY REALTY, INC.,

Plaintiff,

INDEX NO.
115724/96

- against -

RICHARD HYATT, LAURENCE HEGARTY, ELIZABETH GROSS, BONNIE KOZEK, CHRISTIAN MARCLAY, LYDIA YEE and JEFFREY PERKINS,

Defendants.

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EDWARD H. LEHNER, J.;

Before me is i) a motion by defendants Hegarty, Gross, Kozek and Perkins (the "Tenants") to vacate and set aside a consent judgment dated October 24, 1996 (the "Judgment"), entered pursuant to a stipulation entered into in June 1996 (the "Stipulation"), declaring that the premises occupied by the Tenants are not subject to the Rent Stabilization Law ("RSL"), and enjoining plaintiff from evicting them pursuant to the terms of the Judgment, and ii) a cross-motion by the plaintiff-landlord (the "Landlord")[1] for an order directing the Sheriff to turn over possession of the Tenants' premises to it.

It is asserted by the Tenants that since 1983 the subject building at 142 Fulton Street in Manhattan (the "Building") has contained at least six dwelling units,

[1] By stipulation dated June 1, 2006, the parties have agreed to substitute 142 Fulton LLC as plaintiff in lieu of Century Realty, Inc.

although admittedly none of the loft units has ever been legalized for the residential use employed by the Tenants (Tr. pp. 3, 12). In the early 1990s disputes arose between the Tenants and the Landlord as to the Tenants' rights to remain in occupancy under the RSL. To resolve the controversy, all of the Tenants, represented by their present counsel, entered into the Stipulation which provides that they will consent to the entry of a judgment in an action to be commenced declaring that the various units occupied by them are not subject to the RSL, but that they may remain in possession of the units until June 30, 2006. The Stipulation states: that the Tenants claim to be subject to the RSL; that the Landlord will not issue renewal leases without first obtaining a declaration that the units are not subject to the RSL; that the Building was "substantially rehabilitated for residential use after January 1, 1974 and the tenants did not complete the substantial rehabilitation"; that increases in the rents for each of the units (which are set forth in the Stipulation and asserted by the Landlord to be below market rentals) will be increased each year by the percentage of increase approved for that year by the Rent Guidelines Board; and that any Tenant who fails to timely vacate a unit will be liable for an amount, as "liquidated damages," equal to two times the total monthly rent during the last month of the lease.

While the subsequently issued complaint dated August 29, 1996 alleges that the Building was substantially rehabilitated subsequent to January 1, 1974 with the

Tenants not having performed such work, it was acknowledged by the Landlord that it did not substantially rehabilitate the Building (Tr. pp. 8-10). It appears that such provision was contained in the Stipulation in order to form a basis to exempt the Building from the RSL in light of the Appellate Division decision in Wilson v. One Ten Duane Street Realty Co., 123 AD2d 198 (1st Dept. 1987)(see Tr. pp. 8-11). In that case, where the tenants had in fact legalized their units for residential use, the court noted the statutory provision exempting from regulation any building that was "substantially rehabilitated as family units on or after January 1, 1974."

The Judgment then entered on consent by Justice Omansky contains a declaration as to such substantial rehabilitation. The tenants argue that the Stipulation was invalid as a unlawful waiver of the right to renewal leases as provided for in the RSL.

In 2004 a proceeding was commenced against one of the named defendants, Richard Hyatt (not represented on this motion[2]), on the grounds that he sublet his unit in violation of the provisions of the Stipulation. In defense of that proceeding, he argued that the Stipulation was an impermissible waiver of rights under the RSL and thus invalid. That defense was rejected by Justice Omansky by decision dated February 23, 2004. In an exhaustive opinion discussing the various cases dealing

[2] All named tenants not represented herein have previously vacated the Building (Tr. p. 16).

with claims that there was an impermissible waiver of rights under the RSL, she concluded that "the 'no waiver' provisions under (the RSL and the Emergency Tenant Protection Act) are not applicable to stipulations entered into the record, on the advice of counsel, and in settlement of a bona fide dispute ... (and the tenant) is permitted to waive a defense to this action, namely his right to adjudicate his status under the" RSL. Accordingly, the application of Hyatt to vacate the Judgment and Stipulation was denied.

However, not raised in that motion was the now admitted falsity of the stipulated "fact" that rehabilitation of the Building was performed after January 1, 1974. Since this agreed "fact" was the basis for the decretal provision of the Judgment that the units are not covered by the RSL [See, McKinney's Uncons. Laws §8625(a)(5)], it is thus evident that the Judgment was procured by a misrepresentation to the court of a material fact.

In one sense it can be said that both parties benefitted from the Stipulation in that the Tenants were granted leases for ten-year terms in lieu of possible eviction in the event of an adjudication that they were not covered by the RSL because their units had not been legalized for residential occupancy (in contrast to the tenants in Wilson whose units had been legalized), and the Landlord was permitted to receive rent notwithstanding the illegal residential occupancy. On the other side of the coin, the Tenants, if found to be covered by the RSL, gave up the right to renewal leases, while

the Landlord agreed to allow the Tenants to remain in possession for ten years without any court or agency determining that they were entitled to the protection of any rent law.

I agree with the above stated legal principle enunciated by Justice Omansky that a court could enforce a stipulation with respect to coverage if parties, who were all represented by counsel, present a stipulation setting forth facts that raise a bona fide dispute as to whether a tenant, whose occupancy had never been acknowledged by the landlord or determined by a court or administrative agency as subject to the RSL, was entitled to its protection, with the caveat that the Rent Stabilization Code (the "Code") §2523.3 specifically prohibits a landlord from requiring a "prospective tenant" to agree that the apartment will not be the tenant's primary residence. The foregoing conclusion is in contrast to stipulation whereby a tenant covered by the rent laws waived a right possessed by the tenant. See, Drucker v. Mauro, ___ AD3d ___, 814 NYS 2d 43, 44 (2006)("an agreement in purported or actual settlement of a landlord-tenant dispute which waives the benefit of a statutory protection is unenforceable as a matter of public policy, even if it benefits the tenant:); Draper v. Georgia Properties, Inc., 94 NY2d 809, 811 (1999)("De-regulation of apartments is ... available through regular, officially authorized means ... not by private compact"); Delano Village Companies v. New York State Division of Housing and Community Renewal, 245 AD2d 196 (1st Dept. 1997).

A contrary conclusion would mean that any bona fide dispute on a question of coverage could never be resolved by the parties and would mandate that such disputes always be litigated. "Stipulations of settlement are favored by the courts and are not lightly set aside" [Hallock v. State of New York, 64 NY2d 224, 230 (1984)]. However, "the enforcement of (a) stipulation is subject to the supervision of the courts" [Malven v. Schwartz, 65 AD2d 769 (1st Dept. 1978)], and the remedial nature of the RSL and the rights provided for therein "outweigh considerations of finality which might otherwise obtain in the enforcement of settlements reached in commercial contexts" [Strassman v. Estate of Eggena, 151 Misc. 2d 638, 639 (A. Term, 1st Dept. 1992)].

Here, both sides were in 1996, and continue to be, represented by knowledgeable lawyers in the landlord-tenant field. In his affirmation dated June 8, 2006 Tenants' counsel candidly acknowledged that he and his adversary in negotiating the Stipulation "believed in good faith that we seized upon an appropriate means to avoid a regulatory system that the parties were willing to cast aside ... (but) have since learned that the approach we chose was both inappropriate and ineffective ... (and) that there are policy considerations which outweigh the interests that the parties perceived in 1996."

Counsel for the Landlord agrees that a mere stipulation by a tenant subject to the RSL to vacate the tenant's premises at the expiration of a lease may not be

enforceable, but contends that enforcement is mandated if approved by a court of competent jurisdiction (Tr. pp. 34-36). Hence, he concludes that since the Judgment was signed by Judge Omansky, the Landlord is now entitled to evict the Tenants.

The major problem I have with the Landlord's position is that the basic fact setting forth the basis for the Judgment was the aforesaid misrepresentation as to the grounds for the exemption from the RSL. Even though the Stipulation contains both benefits and detriments to the Landlord and to the Tenants, the submission of a stipulation containing intentional misrepresentations as to an essential fact is, in essence, a fraud upon the court.

In 390 West End Associates v. Baron, 274 AD2d 330 (1st Dept. 2000), a consent judgment was submitted to the court in which the tenant stipulated that he would not be occupying the premises as a primary residence and agreed that therefore the premises would not be subject to the RSL. The agreement was part of a scheme whereby the tenant would then sublet the premises to others who would be required to state that they also would not occupy the premises as a primary resident, with the result that the owner and prime tenant earned profits well above that authorized by the RSL. In voiding the collusive arrangement, the Appellate Division found that the nonprimary resident lease was invalid as an agreement to waive the benefits of the RSL in violation of Code §2520.13. Under a similar set of facts, in 390 West End Avenue Associates v. Youngstein, 221 AD2d 292 (1st Dept. 1995), where the parties'

consent judgment was vacated as an attempt to evade the RSL and create an "illusory tenancy," the court referred to the plaintiff landlord as "as a wrongdoer in pari delicto," which it held "justifies the equitable denial of any affirmative relief to it" (p. 294).

When a case relating to the building involved in the prior two cases reached the Court of Appeals in a separate action to recover for a rent overcharge commenced by the affected subtenants, who had participated with the prime tenant and owner of the building in falsely representing that they did not intend to use the apartment as their primary residence, Chief Judge Kaye referred to the scheme as fraudulent and wrote that "[a]lthough no justiciable controversy actually existed, the parties thus endeavored to use the courts to achieve their joint purpose of freeing the apartments from regulation." [Thornton v. Baron, 5 NY3d 175, 178 (2005)].[3] While noting that the subtenants who brought the overcharge complaint "themselves had unclean hands," Judge Kaye wrote that the principle the court adopted in fixing the legal rent "will apply equally to innocent renters looking to succeed illusory tenants" (p. 181). She thus ruled that, although the subtenants who participated in the scheme would benefit from the rent fixing formula the court adopted, the unlawful scheme to deregulate the apartment "undermin(ed) the statute's very purpose of preserving a

[3] It is noted that the same law firm that represented the landlord in the Thornton and Wilson cases represents the Landlord herein.

stock of affordable housing ... (and) no wrongdoer may benefit at the expense of the public" (p. 182).

In contrast to the last three cited cases where the parties devised a fraudulent scheme in an effort to obtain rents in excess of that permitted by law, in the case at bar the parties in apparent good faith came to an agreement with respect to the subject loft units at a time when it was not absolutely clear that the occupancy would be protected by the RSL. To insure that the agreement would be approved by a court and be enforceable, they included the aforesaid misrepresentation of fact. Notwithstanding that misrepresentation, the Landlord now wants this court to enforce the Judgment. This I will not do as the integrity of the judicial system is at stake when judicial mandates are procured by the submission of fraudulent representations. As in Shaw v. Shaw, 97 AD2d 403, 404 (2nd Dept. 1983), this "court will have no part in enforcing a judgment which was procured by a fraud practiced on it." Further, as stated in In re Holden, 271 NY 212, 218 (1936), "fraud practiced on the court in the very act of procuring a judgment or order will justify a court in vacating such judgment or order."

Accordingly, the motion of the Tenants is granted to the extent of vacating and setting aside the Judgment. The cross-motion of the Landlord for a direction to the Sheriff of the City of New York to turn over possession of the subject units to it is denied. The parties are thus placed back into the positions they occupied prior to the

submission of the Judgment. They can now litigate based on facts, not fiction.

This decision constitutes the order of the court.

Dated: June 26, 2006

J.S.C.