

Oster v State of New York

2007 NY Slip Op 32727(U)

August 29, 2007

Supreme Court, New York County

Docket Number: 0109188/2006

Judge: Jane S. Solomon

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

PRESENT: SOLOMON
Justice

PART 55

OSTER, ZICHINI,
ET AL.

INDEX NO. 109188/06

MOTION DATE _____

MOTION SEQ. NO. 02

MOTION CAL. NO. _____

- v -

THE STATE OF NEW YORK,
ET AL.

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

is decided in

accordance with the annexed memorandum decision and order.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 8/29/07

JANE S. SOLOMON J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 55

-----X
ZICHRINI OSTER, DAVID ROBARDS
JOSE RIVERA, PATRICK MERILL and
MIGUEL MUNOZ,

INDEX NO. 109188/2006

Plaintiffs,

-against-

DECISION AND ORDER

THE STATE OF NEW YORK, GARY BROWN
and STEVE BROWN

Defendants.

-----X
JANE S. SOLOMON, J.

Plaintiffs Zichrini Oster, David Robards, Jose Rivera, Patrick Merril, and Miguel Munoz move, pursuant to CPLR § 2221, to reargue this court's February 22, 2007 order and judgment to the extent that they did not expressly address plaintiffs' claim that the Use and Occupancy Law (UOL), L. 1983, ch 403, codified, in part, as Rent Stabilization Law (RSL) § 26-511 (c) (9) (b), is overbroad, and, pursuant to CPLR § 2025 (b), for leave to amend their fifth cause of action.

While the second amended verified complaint alleged that the UOL is vague and overbroad, plaintiffs' memorandum of law in opposition to respondent State of New York's motion to dismiss the complaint made no independent argument as to overbreadth. However, in the interest of providing plaintiffs with the more comprehensive record that they seek for purposes of their pending appeals to the Appellate Division, First Department, and to the Court of Appeals, the court will grant the motion to reargue.

The portion of the UOL that plaintiffs challenged requires that the Rent Stabilization Code provide that an owner may refuse to renew the lease to a dwelling unit subject to the RSL

"where he or she seeks to recover possession of one or more dwelling units for his or her own personal use and occupancy" RSL § 26-511 (c) (9) (b). Plaintiffs contended that the phrase "one or more" is vague and overbroad. Plaintiffs acknowledge that the Appellate Division, First Department, has held that the challenged phrase is not unconstitutionally vague (Pultz v Economakis, 40 AD3d 24 [1st Dept 2007]), but they urge that it is, nonetheless, overbroad.

Overbreadth analysis is applicable to statutes that regulate rights guaranteed by the First Amendment. See e.g., United States v Salerno, 481 US 739 (1987); People v Shack, 86 NY2d 529 (1995). While it may apply to statutes that regulate expressive conduct other than speech (Broadrick v Oklahoma, 413 US 601 [1973]), it is wholly inapplicable here, where the challenged statute does not regulate any such conduct.

The fifth cause of action in plaintiffs' second verified complaint alleged that plaintiffs' right to the equal protection of the laws is violated inasmuch as the regulations promulgated pursuant to the Emergency Tenant Protection Act, as amended by the UOL, which apply to rent-stabilized units outside New York City (City), require that an owner who seeks to recover such a unit for his or her own use must seek an order from the New York State Division of Housing and Community Renewal (DHCR) authorizing the commencement of an action to recover possession of the unit (Unconsolidated Laws § 2504.4 [a] [4]), whereas the Rent Stabilization Code, which applies to rent stabilized units within the City, allows such an owner to commence a summary holdover

proceeding once said owner has sent the tenant(s) a non-renewal and termination notice that complies with the requirements set forth in Unconsolidated Laws § 2524.2.

Plaintiffs' proposed amendment adds no new facts but merely fleshes out the differences in procedure between proceedings before DHCR and actions in New York City Civil Court, and specifies the different appeals available from actions commenced in Supreme Court upon authorization from DHCR and actions commenced in the Civil Court. While amendments to pleadings are to be given freely (CPLR § 3025 [b]), the additional specifications in the proposed amendment would have no effect on this court's decision. However, again to provide plaintiffs with a fuller record for purposes of appeal, the court will declare that plaintiffs' equal protection rights are not violated by the differences alleged in the fifth cause of action. Accordingly, it hereby is

ORDERED that the motion to reargue is granted, and upon reargument, it hereby is

ADJUDGED and DECLARED that the phrase "one or more" in Rent Stabilization Law § 26-511 (c) (9) (b) is not overbroad; and it further is

ORDERED that the motion to amend is denied; and it further is

ADJUDGED and DECLARED that plaintiffs' right to the equal protection of the laws is not violated by the provisions of Unconsolidated Laws § 2504.4 (a) (4).

Dated: August 29, 2007

ENTER:



J.S.C.

UNFILED JUDGMENT

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JANE S. SOLOMON