

Haruvi v Punt

2008 NY Slip Op 31625(U)

June 3, 2008

Supreme Court, New York County

Docket Number: 0117371/2006

Judge: Emily Jane Goodman

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

PRESENT: EMILY JANE GOODMAN
Justice

PART 17

Haruni, Abe

INDEX NO. 117371/06

- v -

MOTION DATE _____

Pent, Anthony

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

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

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

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

read and motion

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

FILED

JUN 17 2008

COURT

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

Dated: 6/3/08

EJG

EMILY JANE GOODMAN S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 17

-----X
ABE HARUVI and ARTHUR HARUVI,

Plaintiffs,

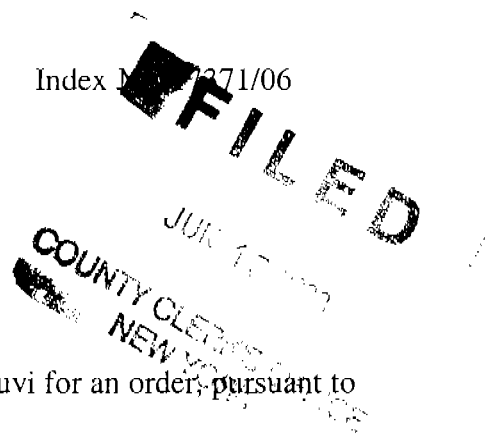
-against-

ANTHONY PUNT, JASON PUNT, and MARTHA HASSAN,

Defendants.

-----X
EMILY JANE GOODMAN, J.:

Index No. 271/06



This is a motion by plaintiffs Abe Haruvi and Arthur Haruvi for an order, pursuant to CPLR Article 10, permitting them to serve an amended summons and complaint upon previously unnamed defendants and granting such defendants the time set forth in the CPLR to appear and to answer; for an order, pursuant to CPLR 3212, awarding plaintiffs summary judgment; or, in the alternative, for an order directing defendants to pay plaintiffs past, present and prospective use and occupancy from May 2006 to February 2007 at \$3,450.00 per month for a total of \$34,500.00. Defendants cross motion for an order, pursuant to CPLR 3211 (a) (8) and 3212, dismissing the complaint against Jason Punt on the ground that the summons and complaint were improperly served, has been withdrawn.¹

This action concerns premises located at 450 West 57th Street, New York, N.Y., specifically, apartment 1E at that location. It is undisputed that an entity known as HAR Holding Co. (HAR) was the owner and landlord of the premises and that plaintiffs Abe Haruvi and Arthur Haruvi, at some unspecified time, became the individual owners of the subject premises. Former

¹Pursuant to the so-ordered stipulation dated June 14, 2007, Jason Punt withdrew his cross motion for summary judgment based upon improper service, waived his affirmative defense with respect to improper service, and agreed to submit to the jurisdiction of the court.

tenants Jean and Leo Punt lived in apartment 1E for an unspecified number of years, and were the grandparents of Anthony and Jason Punt, and the parents of Martha Hassan.

In 1998, HAR filed a summary holdover proceeding in the Housing Part, Civil Court of the City of New York, New York County, under Index No. L&T 93671/98, against Jean and Leo Punt, seeking to evict them on the ground that they were holdover tenants occupying the apartment without the owner's (HAR's) permission. Apparently, either Leo Punt, or Leo and Jean Punt together, had been employed as the building superintendents and were living in apartment 1E as part of their employment. It is undisputed that their grandsons, Anthony and Jason Punt, lived with them in apartment 1E for many years prior to, and including, the time that HAR brought the summary holdover proceeding against their grandparents.

Leo and Jean Punt were represented by attorney Lynn Martell in the summary holdover proceeding which was ultimately resolved, on November 5, 2001, by way of a written stipulation (the Stipulation), at which time, Leo Punt was, approximately, 82 years of age and Jean Punt was, approximately, 71 years of age. Pursuant to the stipulation, HAR recognized apartment 1E as a rent stabilized unit, HAR recognized Jean and Leo Punt as the lawful tenants of apartment 1E, and HAR granted them a substantially reduced, preferential rent of \$150.00 per month for as long as either Jean or Leo Punt continued to reside in the apartment. HAR also acknowledged that Anthony and Jason Punt, 21 and 20 years old respectively, had lived in the apartment with their grandparents on a continuous basis as their primary residence for more than 15 years.

The Stipulation states that the parties would execute a standard two-year lease, commencing October 1, 2001, with a monthly rent of \$2,100.00, and that Jean and Leo Punt would be provided with renewals in conformance with Rent Stabilization Code (RSC) and the

[* 4]

Rent Guidelines Board. It further states that, notwithstanding the monthly rent stated in the lease or any amount set forth in the biannual renewals, Leo and Jean Punt would only be required to pay HAR, or any successor landlord, the sum of \$150.00 for each month they lived in apartment 1E. The Stipulation states that other persons may reside in the apartment along with Leo and Jean Punt and their grandsons on the condition that the landlord be informed, in writing, of any change in the number of occupants and the identity of the occupants within 30 days of such change. Any new or additional occupant was required to provide the landlord with a notarized statement of his or her occupancy of apartment 1E, including a written waiver of his or her possible right to succeed to the apartment.

In exchange, Leo and Jean Punt expressly waived the benefit of successive tenancy under RSC Section 2523.5 (b).² Their grandsons, Anthony and Jason Punt, also expressly agreed “that upon the death or permanent vacatur of Jean or Leo Punt they will have no tenancy rights with respect to apartment 1E and will be required to vacate said apartment” 12 months from the date of death or permanent vacatur of their grandparents, during which time the monthly rent would remain at \$150.00. The Stipulation includes an acknowledgment that Anthony and Jason Punt retained and consulted with Ruben England, Esq. of MFY Legal Services, Inc., 200 Broadway, New York, New York, “concerning their rights and obligations under this Agreement and as to

²RSC § 2523.5 (b) (1) provides, in relevant part:
[u]nless otherwise prohibited by occupancy restrictions based upon income limitations . . . if an offer is made to the tenant pursuant to the provisions of subdivision (a) of this section and such tenant has permanently vacated the housing accommodation, any member of such tenant’s family, as defined in section 2520.6 (o) of this Title, who has resided with the tenant in the housing accommodation as a primary residence for a period of no less than two years . . . immediately prior to the permanent vacating of the housing accommodation by the tenant . . . shall be entitled to be named as a tenant on the renewal lease.

the possible succession rights upon the permanent vacatur or death of their grandparents Jean and Leo Punt they are waiving and giving up by signing this Agreement” (Stipulation, ¶ 7).

The Stipulation further provides that “if any party fails to comply with any of its terms, the aggrieved party may make a motion on notice to the attorney for the other parties, which motion shall be referred to this Part of the Housing Court for a hearing or any other relief to determine if a breach has occurred and what remedy is appropriate consistent with the terms and conditions of this agreement” (Stipulation, ¶ 13).

The concluding paragraph, paragraph 14, provides as follows: “[i]t is agreed that this Stipulation is the result of extensive negotiations between both sides.” The Stipulation was signed by: Art Haruvi as owner-landlord; Anthony LaCrichia, Esq., as attorney for the owner-landlord; Lynn Martell, Esq., as attorney for Leo and Jean Punt; Leo Punt; Jean Punt; Leo Punt as the son of Leo and Jean Punt; Anna Punt as the daughter of Leo and Jean Punt; Martha Hassan as the daughter of Leo and Jean Punt; Jason Punt; and Anthony Punt, and was so ordered by Judge Douglas E. Hoffman. It is undisputed that Leo Punt passed away on March 15, 2004, that Jean Punt passed away on April 27, 2005, and that defendants did not notify plaintiffs of their passing in accordance with the terms of the Stipulation.

At some unspecified time in 2006, HAR moved to restore the proceedings, under L&T Index No. 93671/98, to the calendar of the Civil Court of the City of New York, Housing Part H, seeking entry of a final judgment of possession and for use and occupancy against Anthony and Jason Punt. Anthony and Jason Punt cross-moved to dismiss the proceeding. By decision and order dated November 17, 2006, the Hon. Kevin C. McClanahan found, in relevant part, that: (1) the Stipulation did not provide for the entry of a final judgment of possession in the event that

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Anthony and Jason Punt failed to vacate the apartment 12 months after the death or permanent vacatur of Jean and Leo Punt; and (2) the court did have personal jurisdiction over Anthony and Jason Punt.

Plaintiffs thereafter commenced the instant action in Supreme Court, New York County, for judicial enforcement of the terms of the Stipulation, including a determination that the market value for the apartment is \$3,450.00, together with a judgment of possession plus use and occupancy from May 1, 2006 forward at the monthly rate of \$3,450.00. By motion, plaintiffs seek to add Vivia Whilby (Whilby) and an unidentified minor as party defendants in this action, based upon the assertion of the sole answering defendant, Jason Punt, that these individuals reside with him in apartment 1E.³

As stated above, the cross motion has been withdrawn. Jason Punt, nevertheless, opposes plaintiffs' motion for summary judgment on the ground that the Stipulation is void and unenforceable as contrary to public policy.

Because the Stipulation is void and contrary to public policy, plaintiffs' motion for summary judgment is denied, except as to the request to add previously unnamed defendants, which is granted as unopposed.

RSC § 2520.13 provides that "[a]n agreement by the tenant to waive the benefit of any provision of the RSL or this Code is void." In Drucker v Mauro (30 AD3d 37, 38 [1st Dept] lv dismissed 7 NY3d 844 [2006]), the Appellate Division, First Department, reviewed cases

³In the sixth affirmative defense, Jason Punt asserts that he has resided in the apartment his entire life, including the two years immediately prior to the deaths of Jean and Leo Punt, that he is still living there along with his fiancée, Whilby, and their infant daughter, and that he is entitled to succession rights to the apartment.

[* 7]

involving attempts by parties to residential leases to either strike or uphold agreements which incorporate terms that conflict with the Rent Stabilization Laws. In its decision, the First Department emphasized:

that the parties to a lease governing a rent-stabilized apartment cannot, by agreement, incorporate terms that compromise the integrity and enforcement of the Rent Stabilization Law. Any lease provision that subverts a protection afforded by the rent stabilization scheme is not merely voidable, but void (Rent Stabilization Code [9 NYCRR] § 2520.13), and this Court has uniformly thwarted attempts, whether by mutual consent or by contract of adhesion, to circumvent regulated rent maximums

(Drucker v Mauro, 30 AD3d at 38; see also Draper v Georgia Props., 94 NY2d 809 [1999]; 390 W. End Assoc. v Harel, 298 AD2d 11 [1st Dept 2002]; 390 W. End Assoc. v Baron, 274 AD2d 330 [1st Dept 2000]; Albright v Shapiro, 214 AD2d 496 [1st Dept 1995]; Matter of Yanni v New York State Div. of Hous. & Community Renewal, 194 AD2d 375 [1st Dept], lv denied 82 NY2d 662 [1993]; Bruenn v Cole, 165 AD2d 443 [1st Dept 1991]; but see Kent v Bedford Apts. Co., 237 AD2d 140 [1st Dept 1997]).

Recently, the Court of Appeals reiterated this principle (see Riverside Syndicate, Inc. v Munroe, 10 NY3d 18 [2008]). In Riverside, the landlord sought a determination that a 1996 so-ordered stipulation was void after the tenants refused to comply with it in 2003. The stipulation recognized the rent stabilized status of the tenants, regardless of their primary residence, set the monthly rental at \$2,000 (the landlord's brief indicated that the maximum rent at the time should have been \$1,325.00 and the tenants' figure was lower), and included a waiver of the rent stabilization provisions (id.). Based on the \$2,000 monthly rental amount, the apartment was subsequently deregulated in 2000, without objection from the tenants (id.). The Court of Appeals noted that the application of the law was uncomplicated in that the agreement, on its face, was

void as its intent was to waive the benefits of rent stabilization (id. at 22). The Court stressed that rent stabilized apartments should be only rented at the legal maximum rent or deregulated when conditions are met, but that a stipulation which distorted “the market without benefitting the people the rent stabilization laws were designed to protect” cannot be recognized (id. at 23).

Like the so-ordered stipulation in Riverside, the Stipulation here was the product of extensive negotiations and was so-ordered by a judge. However, in exchange for its benefits, the Punts forfeited any rights they might have to succession, and Jean and Leo Punt executed a lease stating that, as of October 1, 2001, the monthly rent for apartment 1E was \$2,100.00. By setting the rent at \$2,100.00, an amount which exceeds, by \$100.00, the requisite monthly rental needed to trigger luxury decontrol (see Admin Code §26-504.1), and by waiving/eliminating the Punt family’s rights to succession, the intended effect of the Stipulation was to permanently remove apartment 1E from rent regulated status at the end of the Punts’ tenancy.⁴ There is no absolutely no evidence that \$2,100.00 would be the appropriate legal regulated rent for the apartment. Thus, as in Riverside, the intent of the Stipulation was to effect a market distortion, to the detriment of future tenants in the apartment, although the Punts, like the tenants in Riverside, received benefits and agreed to its terms (see also Drucker v Mauro, 30 AD3d at 39-40 [permitting parties to a rent-stabilized lease to stipulate to a rent that exceeds the statutory lawful regulated amount can adversely affect both the legal rent and the regulated status of the dwelling unit for future occupants which militates in favor of voiding agreements to prevent abuse]).

⁴No party has proffered any evidence indicating that the apartment was, in fact, subject to rent stabilization, although it very well may be. However, for purposes of this decision, this Court need not make that determination given that the intent of the Stipulation, on its face, is to evade Rent Stabilization Laws.

Accordingly, plaintiffs' motion is denied except as to the request to add the previously unnamed defendants. The Stipulation cannot be the predicate for the relief sought as it is void and contrary to public policy. In light of the fact that the Stipulation is void, and in light of Jason Punt's amended answer asserting counterclaims for succession rights, it remains for a future determination whether he is entitled to succeed to the apartment, and if so, what is the amount of legal regulated rent for the apartment.

Accordingly, it is

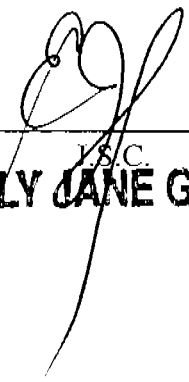
ORDERED that plaintiffs' motion which seek an order, pursuant to CPLR 3212, awarding plaintiffs summary judgment, for an order directing defendants to pay plaintiffs past, present and prospective use and occupancy from May 2006 to February 2007 at \$3,450.00 per month is denied but the motion is granted to the extent that plaintiffs are permitted to serve an amended summons and complaint upon the previously unnamed defendants; and it is further

ORDERED that the attorneys contact the Court forthwith regarding the issue of payment of an interim monthly amount, pending a determination of the ultimate issues in this case.

This Constitutes the Decision and Order of the Court.

Dated: June 3, 2008

ENTER:



J.S.C.
EMILY JANE GOODMAN

FILED
JUN 13 2008
COUNTY CLERK'S OFFICE
NEW YORK