

Williams v 3694 Broadway Assoc. LLC
2008 NY Slip Op 31790(U)
June 25, 2008
Supreme Court, New York County
Docket Number: 0110166/2007
Judge: Jane S. Solomon
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON JANE S. SOLOMON
Justice

PART 55

Index Number : 110166/2007
WILLIAMS, PATRECE
vs.
3694 BROADWAY ASSOCIATES, LLC
SEQUENCE NUMBER : # 001
SUMMARY JUDGMENT

INDEX NO. 110166-07
MOTION DATE 4-2-08
MOTION SEQ. NO. #001
MOTION CAL. NO. _____

are read on this motion to/for _____

PAPERS NUMBERED
1-4
5-7
8-9

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 is decided in accordance with the annexed memorandum decision and order.

FILED
JUN 26 2008
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 6/25/08

JANE S. SOLOMON J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

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

PATRECE WILLIAMS,

INDEX NO. 110166/2007

Plaintiffs,

DECISION AND ORDER

-against-

3694 BROADWAY ASSOCIATES LLC, and
150-160 VERMILYEA ASSOCIATES LLC,

Defendants.

FILED

JUN 26 2008

COUNTY CLERK'S OFFICE
NEW YORK

JANE S. SOLOMON, J.

In this action to collect on the amount awarded in a State of New York Division of Housing and Community Renewal Office ("DHCR") rent overcharge proceeding, defendants 3694 Broadway Associates LLC ("Broadway") and 150-160 Vermilyea Associates ("Vermilyea") move under CPLR § 3212 for summary judgment dismissing the Complaint. Plaintiff Patrece Williams ("Williams") cross-moves for summary judgment for the amount sought in the Complaint. The motions are decided as follows.

On or around July 28, 2003, Williams entered into a lease with non-party Madison Central Realty, LLC ("Madison Realty") to rent an apartment in the building located at 23 East 109th Street in Manhattan (the "Premises"). Williams later believed that her rent was too high, and commenced a DHCR rent overcharge proceeding against Madison Realty. On February 25, 2005, the DHCR determined that there was a rent overcharge, and awarded Williams \$42,285.76 against Madison Realty, including

treble damages based on its default formula.

On July 12, 2005, Williams filed a judgment with the New York County Clerk's Office in that amount. On August 22, 2005, however, Madison Realty filed a motion by Order to Show Cause to stay enforcement of the judgment, claiming that its managing member was chronically ill and had been unable to participate in the DHCR proceeding. Madison Realty also claimed that it had evidence that there was, in fact, no rent overcharge, or that it was not as high as determined by the DHCR. The parties later resolved the dispute for \$15,000 by a Stipulation of Settlement that was read into the record in open court by the parties' attorneys on November 14, 2005. The Stipulation of Settlement directed the County Clerk to vacate the July 12, 2005 judgment,¹ and also provided that Williams released Madison Realty and its management company from any further liability under the DHCR complaint in exchange for the \$15,000. This amount was subsequently paid to Williams.

Approximately sixteen months later, Madison Realty sold the Premises to defendants. On July 24, 2007, Williams commenced this action seeking \$31,285.76 -- the balance that she believes she is owed from the DHCR proceeding, plus \$17,500 in interest, attorneys fees, costs and disbursements.

¹ The motion papers do not show that the stipulation technically was implemented to vacate the judgment of record, although that clearly is what the parties intended.

Discussion

The first issue raised in this action is whether a plaintiff can reopen a claim against a successive owner after settling its dispute with the previous owner. Although Rent Stabilization Code ("RSC") § 2526.2(f) provides for successor liability in certain instances, here, the judgment against the previous owner was vacated by court order. The "Rent Stabilization Law and Code do not provide any legal basis to modify its order based upon a change of ownership occurring after issuance of the order" (Brea v. Jackson Heights Properties et al., 281 A.D.2d 579, 580 [2nd Dep't 2001]). Moreover, once the judgment against Madison Realty was vacated and Williams received the \$15,000 settlement payment, there was no longer a matter before the court. See Mazalier v. 634 West 135, LLC, 22 A.D.3d 361 (1st Dep't 2005).

The next issue is whether a plaintiff can commence a new lawsuit and elect a new remedy at the close of the lawsuit against the prior owner. RSC § 2526.1(e) provides that a tenant who receives a judgment from the DHCR may choose to either deduct "it from the rent due to the present owner at a rate not in excess of 20 percent of the amount of the penalty for any one month's rent," or enter a judgment against the landlord. "There is no other basis for judicial enforcement of DHCR's order." Bowen v. East 13th Street Realty Co., 182 Misc. 2d 99, 100 (App

Term, NY County 1999). A tenant may take either remedy, but not both, and once a remedy is elected, the tenant "is bound by his choice." East 7th Street Dev. Corp. v. Miller, 138 Misc. 2d 345, 347 (Civ. Ct., NY County 1988). Here, Williams chose to enter a judgment against the previous owner, and although that judgment was vacated, her stipulation that she released Madison Realty from liability precludes her from now seeking to enforce DHCR's order against subsequent owners.

Accordingly, it hereby is

ORDERED that the Williams' cross-motion is denied, defendants' motion is granted, the Complaint is dismissed in its entirety, and the clerk is directed to enter judgment accordingly with costs and disbursements as taxed.

Dated: June 25, 2008

ENTER:


J.S.C.
JANE S. SOLOMON

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NEW YORK