

320-324 W. 14 Dev. LLC v Castillo

2008 NY Slip Op 31998(U)

July 15, 2008

Supreme Court, New York County

Docket Number: 0113292/2007

Judge: Milton A. Tingling

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

PRESENT: **HON. MILTON A. TINGLINO**
J.S.C.

PART 44

Justice

Index Number : 113292/2007
320-324 WEST 14 DEVELOPMENT LLC
vs.
CASTILLO, MARIA
SEQUENCE NUMBER : # 001
SUMMARY JUDGMENT

INDEX NO. 113292-07

MOTION DATE 3/5/08

MOTION SEQ. NO. #001

MOTION CAL. NO. _____

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

is decided in accordance with the annexed decision.

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

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be given. To obtain entry, counsel or interested parties must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 7/15/08

[Signature]

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate DO NOT POST REFERENCE

[* 2]
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 44

~~HON. DELTON A. TINGLING~~

J.B.G.

320-324 WEST 14 DEVELOPMENT LLC,

Plaintiff,

Index No. 113292/07

-against-

MARIA CASTILLO and HAMID KAYANI

Defendants.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be given hereon. To obtain entry, counsel for the party whose representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Tingling, J.:

In this landlord-tenant action, the parties dispute the rent controlled versus rent stabilized regulatory status of the building located at 324 West 14th Street, New York, New York 10014 (Building), and defendants' tenancy of Apartment 5B thereof (Premises). Plaintiff's three-count complaint, and its motion for summary judgment presently before the court, seek a declaration that defendants are subject to New York's Rent Stabilization Law and Code, not the Rent Control Law.

Specifically, plaintiff's first cause of action seeks a declaration that defendants are estopped from claiming the status of rent controlled tenants due to their 36-year delay in asserting such status, and by the doctrine of judicial estoppel because defendants allegedly admitted in another proceeding that they were rent stabilized tenants. Plaintiff's second cause of action seeks a declaration that defendants are exempt from rent control pursuant to section 2200.2(f)(8) of the New York City

Rent and Eviction Regulations, because the Premises were completed after February 1, 1947. Plaintiff's third cause of action seeks a declaration that defendants' August 30, 1970 lease is fraudulent and invalid, and that defendants took possession of the Premises under an August 30, 1971 lease and are not subject to rent control regulation. Plaintiff also seeks attorneys' fees. Defendants' answer asserts one counterclaim for attorneys' fees and expenses.

Defendants are tenants of the Premises. The parties dispute the date of their initial lease. Plaintiff submits a purported initial lease dated August 30, 1971, commencing on October 1, 1971 and ending on September 1, 1972 (1971 Lease). Defendants submit a purported initial lease dated August 30, 1970, commencing on October 1, 1970 and ending on September 30, 1972 (1970 Lease), and they claim that they moved into the Building on May 22, 1971. Defendants' lease was renewed over subsequent years, most recently on July 9, 2007 for a two-year term commencing November 1, 2007 and ending October 31, 2009.

Plaintiff argues, pursuant to the second cause of action of its complaint, that the Building is exempt from rent control regulation, because it was converted from an unregulated single-family home to a multiple dwelling after February 1, 1947. Defendants counter that plaintiff's argument is not based upon certified government documents.

Under the New York City Rent and Eviction Regulations, housing accommodations completed after February 1, 1947 are not subject to rent control. 9 NYCRR § 2200.2(f)(8). Section 26-403(e)(2)(i)(9) of the Administrative Code of the City of New York (Administrative Code) states that housing accommodations that became vacant on or after June 30, 1971 are also exempt from rent control. Housing accommodations that are vacant on or after June 30, 1971 are subject to the Rent Stabilization Law and Code, pursuant to sections 26-501 through 26-530 of the Administrative Code.

Here, plaintiff submits a certified copy of a Department of Buildings Altered Building Application (No. 1313/69), dated September 24, 1970, proposing the conversion of the Building from a single-family dwelling to a multiple dwelling. Plaintiff also submits a deed, dated November 5, 1970, whereby plaintiff's predecessor-in-interest, Anclamar Realty, purchased the Building. In addition, plaintiff submits a letter, dated August 9, 1971, whereby a construction inspector objected to the issuance of a Certificate of Occupancy based upon 37 different objections, including, among other things, unfinished kitchenettes and bathrooms, missing stair treads, and missing locks for apartment doors. Plaintiff also submits a certified copy of the Building's Certificate of Occupancy, dated August 30, 1971, reflecting the conversion of the Building.

This documentary evidence makes a prima facie showing that the Building and the Premises are exempt from rent control, because the conversion from a single-family dwelling to a multiple dwelling was completed after February 1, 1947. Furthermore, the Premises could not have become vacant for purposes of defendants' occupancy until August 30, 1971, the date of the Certificate of Occupancy, which was two months after the rent control base date of June 30, 1971.

Defendants' argument that the Altered Building Application and Certificate of Occupancy submitted by plaintiff do not "appear to be certified copies" (Schwartz Aff., ¶ 3) is belied by the documents themselves. The Altered Building Application and the construction inspector's August 9, 1971 objection letter state that they are certified copies. The Certificate of Occupancy certifies that it is an authentic copy of a record of the Department of Buildings. Moreover, *Bendik v Dybowski* (227 AD2d 228 [1st Dept 1996]), upon which defendants rely in support of their argument, is inapposite.

Defendants claim that they occupied the Premises beginning May 22, 1971. In support of this argument, defendants submit the 1970 Lease. However, defendants' occupancy on May 22, 1971, several months before the construction inspector's August 9, 1971 objections and the issuance of the Certificate of Occupancy on August 30, 1971, would have constituted an illegal occupancy

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under New York's Multiple Dwelling Law. See Multiple Dwelling Law § 301 (1) ("[n]o multiple dwelling shall be occupied in whole or in part until the issuance of a certificate by the department that said dwelling conforms in all respects to the requirements of this chapter, to the building code and rules and to all other applicable law") and section 302 (1)(b) ("[n]o rent shall be recovered by the owner of such premises for said period, and no action or special proceeding shall be maintained therefor").

In addition, the 1970 Lease is between defendant Castillo as tenant and Anclamar Realty as landlord. The 1970 Lease purports to be made August 30, 1970, for a term commencing on October 1, 1970. However, Anclamar Realty did not own the Building until November 5, 1970. Defendants fail to explain how they could have entered into the 1970 Lease with Anclamar Realty and taken possession of the Premises before Anclamar Realty owned the Building, before the Building was converted to a multiple dwelling, and before the Certificate of Occupancy was issued.¹

Defendants' additional arguments concern the purported hearsay affidavit of plaintiff's counsel, an alleged conflict of interest based upon the alleged previous representation of

¹ The court notes that defendants submit no evidence, other than defendant Castillo's self-serving affidavit, that they gained possession of the Premises on May 22, 1971. Tellingly, defendants do not deny the validity of the 1971 Lease. Defendants also fail to explain why they entered into the 1971 Lease, for a lease term commencing October 1, 1971, when the 1970 Lease was not set to expire until September 30, 1972.

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defendants by an attorney now employed by plaintiff's counsel, plaintiff's alleged failure to satisfy defendants' discovery demands, and purported issues of fact concerning when and how many residential units existed in the Building. The affirmation of plaintiff's attorney is properly supported by the documentary evidence of the Altered Building Application and Certificate of Occupancy. *Zuckerman v City of New York*, 49 NY2d 557, 563 (1980) ("affirmation of an attorney, even if he has no personal knowledge of the facts, may, of course, serve as the vehicle for the submission of acceptable attachments which do provide 'evidentiary proof in admissible form', e.g., documents, transcripts"). None of defendants' additional arguments or evidence controvert plaintiff's prima facie showing that, as a matter of law and based upon the public records of the Department of Buildings, the Building and the Premises are exempt from rent control. *Kuehne & Nagel, Inc. v Baiden*, 36 NY2d 539, 544 (1975) ("[f]acts appearing in the movant's papers which the opposing party does not controvert, may be deemed to be admitted").

For the foregoing reasons, defendants fail to rebut plaintiff's prima facie showing. Accordingly, plaintiff's motion for summary judgment is granted on its second cause of action. Because summary judgment is granted on plaintiff's second cause of action, the court need not address plaintiff's alternate bases for relief in plaintiff's first and third causes of action.

Plaintiff fails to make a prima facie showing that ti is entitled to attorney's fees; therefore, that request is denied.

Accordingly, it is hereby

ORDERED that Plaintiff's motion for summary judgment is granted to the following extent: (1) defendants are not subject to the Rent Control Law and are precluded from claiming the status of rent controlled tenants; and (2) the building located at 324 West 14th Street, New York, NY 10014, and defendants' tenancy of apartment 5B thereof, are subject to the Rent Stabilization Law and Code; and (3) defendants' counterclaim is dismissed, and plaintiff's motion is otherwise denied; and it is further

ADJUDGED and DECLARED that: (1) defendants are not subject tot eh rent Control Law and are precluded from claiming the status of rent controlled tenants; and (2) the building located at 324 West 14th Street, New York, NY 10014, and defendants' tenancy of apartment 5B thereof, are subject to the rent Stabilization Law and Code.

Parties are to proceed with the scheduled conference.

DATED: July 15, 2008

mat

**HON. MILTON A. TINGLING
J.S.C.**

UNFILED JUDGMENT
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