

Maury v 26 Fort Charles Place, Inc.

2008 NY Slip Op 32550(U)

September 19, 2008

Supreme Court, New York County

Docket Number: 0103585/2007

Judge: Martin Shulman

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

MARTIN SHULMAN

PRESENT: J.S.C.

PART 1

Index Number: 103585/2007 *Justice*

MAURY, LAUREL

vs

26 FORT CHARLES PLACE, INC.

Sequence Number: 001

SUMMARY JUDGMENT

INDEX NO. 103585/07

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

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

Notice of Motion/ ~~Order to Show Cause~~ — Affidavits — Exhibits ...
Cross-motion and
Answering Affidavits — Exhibits _____

PAPERS NUMBERED

1, 2

3, 4

Replying Affidavits _____
5


Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *and cross-motion*
are decided in accordance with the attached
decision, order and judgment.

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 1419).

Dated: September 19, 2008



J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 1

-----X
LAUREL MAURY,

Plaintiff,

Index No.: 103585/07

-against-

Decision, Order & Judgment

26 FORT CHARLES PLACE, INC.
-----X

Defendant

MARTIN SHULMAN, J.

UNFILED JUDGMENT
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In this action for declaratory relief and for reimbursement of rent overcharges (the "Complaint") arising out of a rent stabilized lease agreement containing a preferential rent provision entered into between plaintiff Laurel Maury ("Plaintiff" or "Tenant"), as tenant and Defendant 26 Fort Charles Place, Inc. ("Defendant" or "Landlord") as landlord, Plaintiff now moves for an order granting Plaintiff summary judgment against Defendant for a declaration that the preferential rent provision contained in the lease rider is binding and continues throughout Plaintiff's tenancy notwithstanding the enactment of Rent Stabilization Law ("RSL") §26-511(c)(14) and other related relief (the "Motion"). Defendant opposes the motion and cross-moves to dismiss the complaint and seeks "reimbursement of plaintiff's (sic) attorneys' fees pursuant to RPL Section 234" (the "Cross-Motion").

Issue to be Determined

The primary issue to be determined on this round of motion practice and in this action is whether specific provisions of the lease rider pertaining to a preferential rent

endure despite the enactment of RSL §26-511(c)(14) and the effect such contractual provisions may have on future renewal leases during Plaintiff's tenancy.

Relevant Factual Background and the Parties' Contentions

The foregoing facts are undisputed:

- Tenant initially entered into possession of the premises known as and located at 26 Fort Charles Place, Apartment 5D, Bronx, New York (the "Apartment") pursuant to a rent stabilized lease dated December 17, 2002 entered into between Tenant and Landlord for a one year term commencing on January 1, 2003 (the "Lease");
- Attached to and made a part of the Lease is a "Preferential Rent Rider" (the "Rider");
- The Rider provides *inter alia* that: (1) although the rent reserved in the Lease is a preferential rent in the amount of \$775.00 per month, the legal regulated rent for the Apartment is \$1025.28 per month; (2) the Landlord reserves the right to calculate the rental amount for **future vacancy leases** for the Apartment based upon the monthly legal regulated rent; and (3) **"If Renter chooses to renew the terms of this lease, this preferential rent amount, plus all other lawful increases, shall be used to calculate all applicable increases to establish the renewal rent. Thereafter, each successive renewal rent shall be calculated based upon increases to the most recently established renewal rent for as long as the renter remains in occupancy"** (emphasis added);
- Plaintiff renewed her lease for an additional one-year term, January 1, 2004 to December 31, 2004, at a monthly rent of \$809.87 which, pursuant to the terms of the Rider represented a 4.5% rent guidelines increase calculated on the preferential rent of \$775.00 per month;
- Landlord's representative by letter dated September 28, 2004 notified Tenant that because of the enactment of RSL §26-511(c)(14) the Landlord elected to cease the preferential rent and would charge the higher legal regulated rent, plus the applicable rent guideline increase on her next renewal lease.

In support of the motion, Plaintiff asserts that despite the enactment of RSL §26-511(c)(14) the provisions of the Rider entitle her to a contracted for preferential rent throughout her tenancy. Defendant argues that the Rider provisions do not provide for a preferential rent for the life of Plaintiff's tenancy because RSL §26-511(c)(14) as implemented by Rent Stabilization Code ("RSC") §2521.2 "... allowed for 'new lawful increases,' not previously in effect when the original lease was created December 2002" and the relevant Rider provision allows "all other lawful increases" to be used to calculate the rent to be charged to Tenant. In opposition to the Motion Defendant alternatively and speciously argues that "Questions of fact could arguably be deemed to exist as to one's interpretation of the parties' lease and their intent".

SUMMARY JUDGMENT

An award of summary judgment is appropriate when no issues of fact exist. See CPLR 3212(b); *Sun Yau Ko v. Lincoln Sav. Bank*, 99 A.D.2d 943, 473 N.Y.S.2d 397 (1st Dept., 1984), *aff'd* 62 N.Y.2d 938, 479 N.Y.S.2d 213 (1984); *Andre v. Pomeroy*, 35 N.Y.2d 361, 362 N.Y.S.2d 131 (1974). In order to prevail on a motion for summary judgment, the proponent must make a *prima facie* showing of entitlement to judgment as a matter of law by providing sufficient evidence to eliminate any material issues of fact. *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316 (1985); *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923 (1986). Indeed, the moving party has the burden to present evidentiary facts to establish his cause sufficiently to entitle him to judgment as a matter of law. *Friends of Animals, Inc. v. Associated Fur Mfrs., Inc.*, 46 N.Y.2d 1065, 416 N.Y.S.2d 790 (1979).

A preferential rent arises where the amount of rent charged to and paid by the tenant for a housing accommodation is less than the legal regulated rent (see RSC §2521.2), as was the case here. Subsequent and prior to the enactment of RSL §26-511(c)(14), much litigation has ensued involving the interpretation of lease provisions containing preferential rent clauses and/or riders. See generally, *Von Rosenvinge v. Wellington Fee, LLC*, 19 Misc.3d 1118(A), 862 N.Y.S.2d 818 (Sup. N.Y., 2008) for a thorough discussion of the relevant case law). In *Colonnade Management, LLC v. Warner*, 11 Misc.3d 52, 812 N.Y.S.2d 209 (App. Term, 1st Dept. 2006), the Appellate Term, First Department held that in spite of the enactment of RSL §26-511(c)(14) parties to a rent stabilized lease are free to agree to a preferential rent which may endure past the expiration of the lease into any renewal period(s). In concluding same, that court opined that the intent and express agreement of the parties controlled. Thus, if the operative lease provision unequivocally provides that a preferential rent would last for the life of the tenancy, the tenant is entitled to have such lease provision carried over into subsequent renewal leases.

Here, the Rider unambiguously and explicitly provides for a preferential rent for the duration of the Plaintiff's tenancy. To illustrate, the Landlord reserved the right upon future vacancy leases to calculate the rent based upon the monthly legal regulated rent. Additionally, and more significantly, as to Plaintiff's tenancy the parties agreed as recited above that **"If Renter chooses to renew the terms of this lease, this preferential rent amount, plus all other lawful increases, shall be used to calculate all applicable increases to establish the renewal rent. Thereafter, each**

successive renewal rent shall be calculated based upon increases to the most recently established renewal rent for as long as the renter remains in occupancy” (emphasis added). This quoted portion of the Rider is identical to the one at issue in *Von Rosenvinge, supra*.

Here, the Rider’s plain language clearly evidences the parties’ intent that the contracted for preferential rent would continue throughout Plaintiff’s tenancy. Landlord’s protestations to the contrary, and its attempt to construe the terms “plus all other lawful increases” in the Rider to give the Landlord the right “... to include all lawful increases in the form of utilizing the legal regulated rent as the rent to be charged upon renewal”, are without merit. Accordingly, Tenant is entitled to summary judgment on her first cause of action for declaratory relief.

With respect to Plaintiff’s second cause of action for reimbursement of rent overcharges, the Motion seeks a judgment in the amount of \$9,890.96 for rent overcharges through February 2008. However, the Complaint demands only \$6,554.24, the amount due through the date of the Complaint, without indicating whether the alleged overcharges would continue to accrue. As the Landlord does not specifically dispute the Complaint’s calculations, Plaintiff is entitled to a money judgment against Defendant in the amount of \$6,554.24.

Finally, both parties’ requests for attorneys’ fees must be denied. Both the Complaint and the Landlord’s answer are devoid of any demand for attorneys’ fees. In any event, Defendant would not be entitled to recover attorneys’ fees from Plaintiff in this action as it is not the prevailing party.

[*7]

Conclusion

For the reasons set forth above, it is

ORDERED that Plaintiff's Motion is granted to the extent that Plaintiff is granted summary judgment on the Complaint, and is otherwise denied; and it is further

ORDERED that Defendant's Cross Motion is denied; and it is further

ADJUDGED AND DECLARED that the provisions of Plaintiff's initial Lease and Rider granting Plaintiff a preferential rent for the duration of her tenancy remains binding; and it is further

ORDERED that the New York County Clerk is directed to enter judgment in favor of plaintiff Laurel Maury and against defendant 26 Fort Charles Place, Inc. in the amount of \$6,554.24, with interest as calculated by the Clerk at the rate of 9% per annum from March 15, 2007, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

The Clerk is directed to enter judgment accordingly

The foregoing constitutes this court's Decision, Order and Judgment.

Dated: September 19, 2008



Martin Shulman, J.S.C.

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