

Matter of Langford v Lawlor

2010 NY Slip Op 32658(U)

September 23, 2010

Supreme Court, New York County

Docket Number: 107116/10

Judge: Judith J. Gische

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

PRESENT: Grische
HON. JUDITH J. GISCHE Justice
J.S.C.

PART 10

Langford

INDEX NO. 107116/0

MOTION DATE _____

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

Zambor, Conn. NYS DHER

The following papers, numbered 1 to _____ were read on this motion to/for Ans 78

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

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).

motion (s) and cross-motion(s) decided in accordance with the annexed decision/order of even date.

Dated: 9/23/10

[Signature]
HON. JUDITH J. GISCHE 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: Part 10

In the Matter of the Application of
Linda Langford a/j/a Linda Hindes,,

Petitioner,

Decision/Order

For a Judgment Under Article 78 of the
Civil Practice Law and Rules,

Index# 107116/10
Mot. Seq. # 001

-against-

Brain Lawlor, as Commissioner of the
New York State Division of Housing and
Community Renewal, and,

200 West 15th LLC.,

Respondents.

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Recitation, as required by CPLR §2219(a), of the papers considered in the review of this (these) motion(s):

PAPERS	NUMBERED
OSC, Petition, exhibits.....	1
Notice of Cross-Motion to Dismiss, BSG affirm., exhibits.....	2
Notice of Cross-Motion to Remit, CMS affirm., exhibits.....	3
MS affirm. in Opp. to motion to dismiss, exhibits.....	4
MS affirm. In Opp. To remit, exhibits.....	5
BSG affirm. In further support of Cross-Motion, exhibits.....	6

Hon. Gische, J.:

Upon the foregoing papers the decision and order of the court is as follows:

Petitioner, Linda Langford (sometimes "tenant") is the tenant of apartment 18C ("apartment") located at 200 West 15th Street, New York, New York ("building"). She brings this Article 78 petition to challenge the Division of Housing and Community Renewal's ("DHCR") denial of her Petition for Administrative Review ("PAR")

challenging an underlying order, issued on default, decontrolling and removing the apartment from the protection of the Rent Stabilization Laws. Respondent Brian Lawlor ("Lawlor") is the Commissioner of the DHCR. The underlying DHCR order of deregulation was made in connection with respondent, 200 West 15th LLC 's ("owners") petition pursuant to the luxury decontrol provision of the Rent Stabilization Laws.

The owner has cross-moved to dismiss the petition on the merits. Lawlor has cross-moved to remit the matter back to the DHCR. The tenant opposes the cross-motion to dismiss but supports the cross-motion to remit. The owner opposes the cross-motion to remit. For the reasons that follow, the cross motion to remit is granted and the cross-motion to dismiss on the merits and with prejudice is denied. The underlying petition is, however, dismissed without prejudice.

In denying the PAR, the DHCR never looked at the merits of the underlying claims. Instead, it denied the PAR as untimely. The building is the subject of a J-51 tax abatement. The DHCR never considered the issue of whether receipt of ongoing J-51 benefits precludes the landlord from obtaining orders of luxury decontrol. Additionally, the original DHCR decision deregulating the apartment was made before the Court of Appeals decided Roberts v. Speyer Properties LP, 13 NY3d 270 (2009). In Roberts, the Court held that where a building was subject to Rent Stabilization and then participated in the J-51 tax benefit program, the owner could not petition for luxury decontrol as long as the owner was still receiving the tax benefits. The Court of Appeals did not answer other questions, including the retroactive reach of the Roberts doctrine. See: *Hershey-Webb, Gribben, In the Wake of the 'Roberts' Decision, What Next?*, NYLJ 12/1/09. The DHCR currently seeks to reconsider its decision in this case in light of Roberts, *supra* and to

"create a coherent and consistent approach to cases affected by" Roberts, supra.

In view of the fact that an Administrative determination cannot stand where it is affected by an error of law, (see: CPLR § 7803 [3]), the DHCR's request to re-consider its own decision in light of applicable controlling law, is appropriate. In this regard, even though the owner argues that the DHCR knew about the J51 tax abatement when it originally denied the PAR, remitting the matter to the DHCR to take another look at the legal issues involved is still appropriate, especially when it is the DHCR itself that is calling its own decision into question.

Since the Court finds that the matter should be remitted to the DHCR, the owner's request that the petition be dismissed with prejudice at this time is denied. Either party aggrieved by a new determination of the DHCR should be in a position to raise a challenge in a subsequent Article 78 proceeding. Dismissing the petition with prejudice at this time would be contrary to that end. In view of the remittiter, however, the instant petition should be dismissed, but without prejudice.

CONCLUSION

In accordance herewith, it is hereby:

ORDERED and ADJUDGED that the cross-motion to remit this matter to the New York State Division of Housing and Community Renewal for reconsideration of its decision denying petitioners' Petition for Administrative Review is granted and it is further

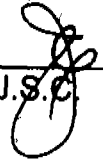
ORDERED and ADJUDGED that the cross-motion to dismiss the petition with prejudice is denied, and it is further

ORDERED and ADJUDGED that the petition is dismissed without prejudice and it is further

ORDERED and ADJUDGED that any requested relief not otherwise expressly granted herein is denied and that this constitutes the decision and order of the Court.

Dated: New York, NY
September 23, 2010

SO ORDERED:



J.G. J.S.C.

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