

Decatrel v Metro Loft Mgt., LLC

2011 NY Slip Op 30732(U)

March 29, 2011

Supreme Court, New York County

Docket Number: 104076/10

Judge: Judith J. Gische

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SCANNED ON 3/30/2011
SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: HON. JUDITH J. GISCHE

PART 10

Index Number : 104076/2010

J.S.C.

DECATREL, FRANCOISE D.

vs

METRO LOFT MANAGEMENT, LLC

Sequence Number : 002

AMEND

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. 002

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 ...

Answering Affidavits – Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion


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

FILED

MAR 30 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: MAR 29 2011


HON. JUDITH J. GISCHE J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

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

-----X
FRANCOISE D. DECATREL,

Plaintiff,

-against-

METRO LOFT MANAGEMENT, LLC AND
135 WILLIAM STREET ASSOCIATES, LLC,

Defendant.
-----X

Decision/Order

Index No.: 104076/10

Seq. No. : 002

Present:

Hon. Judith J. Gische
J.S.C.

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

Papers	Numbered
Pltf's motion [amend] w/RSN affirm, exhs	1
Def's opp w/NW affirm, exhs	2
Pltf's reply	3

-----X

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

This is an action for violation of the Rent Stabilization Laws ("RSL"). Plaintiff moves for leave to amend the complaint to add class allegations and to add defendants 47 Ann Street Associates, LLC; 84 William Street Associates LLC; 17 John Street Associates, LLC; RBNB Wall Street Owner LLC; RBNB 67 Wall Street Owner LLC and RBNB Owner LLC. In opposition, defendants contend that plaintiff's motion should be denied because plaintiff has not provided an affidavit of someone with personal knowledge in support of its motion and plaintiff has not set forth the merit of her proposed amendments.

FILED

MAR 30 2011

NEW YORK
COUNTY CLERK'S OFFICE

Discussion

In the absence of prejudice or surprise resulting directly from the delay, leave to amend a pleading is freely given, pursuant to CPLR § 3025(b) (Fahey v. County of Ontario, 44 NY2d 934 [1978]). Moreover, leave should be granted when the denial of the motion would create a greater prejudice than granting it (Murray v. City of New York, 43 NY2d 400 [1977]; Adams Drug Co. v. Knobel, 129 AD2d 401 [1st Dept 1987]). However, an order allowing the amendment should not be granted without considering the validity of the claim sought to be asserted. Thus, "the sufficiency or meritoriousness of a proposed pleading or matter" should be resolved at the outset "to obviate the possibility of needless time consuming litigation" (Sharapata v. Town of Islip, 82 AD2d 350, 362 *aff'd* 56 NY2d 332 [1982]). The moving party is required to show that the new claims have a colorable basis (NAB Construction Corp. v. Metropolitan Transportation Authority, 167 AD2d 301 [1st Dept. 1990]).

Here, plaintiff's original verified complaint seeks a declaratory judgment ("original complaint"). Plaintiff alleges that non-parties, Aviv Siso and Lina Pena, entered into a one-year lease (the "Lease") with defendants to rent an apartment located at 135 William Street, New York, NY, Apartment 11B (the "Apartment"). Plaintiff alleges that the Lease was renewed for an additional two-year term, Siso vacated the Apartment, and the Lease was amended to include plaintiff as a tenant. The Lease was thereafter renewed by Pena, but not plaintiff. Pena then vacated the Apartment. Defendants advised plaintiff that she would have to complete an application to stay in the apartment and pay a fee of \$325 or re-apply to retain occupancy. Plaintiff refused to pay the fee and defendant served her with a notice to vacate the Apartment. Plaintiff alleges that defendants were receiving

benefits under New York City's real estate tax exemption and abatement program pursuant to RPL § 421-g and that the Apartment is, therefore, rent regulated. Plaintiff brings four causes of action seeking a declaratory judgment (COA1); alleging that defendants violated the RSL by failing to renew the lease (COA2); violated the RSL by charging plaintiff rent in amounts excess to that permitted by the RSL (COA3); and violated RPL § 223-b (the roommate law) (COA4).

Plaintiff's amended class action complaint is directed towards a class of people whose apartments have been illegally deregulated and have been wrongfully charged market rate rents ("class action complaint"). The question of law for this class would be whether defendants wrongfully deregulated apartments while at the same time receiving 421-g tax benefits. See Roberts v. Tishman Speyer Properties, LP, 13 N.Y.3d 270 (2009). Plaintiff seeks to assert herself as a class representative. In the class action complaint, plaintiff alleges that her monthly rent is above the rent that defendants were lawfully allowed to charge because the Apartment was subject to the RSL. Plaintiff asserts two causes of action alleging that defendants overcharged plaintiff by entering into non-stabilized leases (COA1), and seeking a declaration that the apartments continue to be subject to rent stabilization, with legally regulate rents (COA2). Essentially, plaintiff seeks to take the first cause of action in her original complaint and turn it into a putative class action.

Plaintiff's motion is denied. Plaintiff has failed to provide the court with an affidavit of merit setting forth the validity of the claims sought to be asserted in the complaint for the putative class. The class action complaint is unverified. Plaintiff's motion seeks to change a regular action into a class action, yet plaintiff has not established a colorable basis that

this is a viable class action and that she has the wherewithal to survive an Article 9 analysis if and when a class action is made. She has not shown that she is an appropriate class representative, who could otherwise see this litigation through to the end. Mere allegations in the complaint are not sufficient in the absence of plaintiff's affidavit.

Furthermore, based on the original complaint, it appears as though plaintiff is trying to establish her status as a someone who has rights under the RSL in regards to the Apartment. This issue is not even addressed in the class action complaint. Therefore, there are potentially different issues that are applicable to plaintiff but not to other members of a potential class. The court finds that plaintiff has failed to establish the sufficiency or meritoriousness of its proposed class action complaint. See Sharapata v. Town of Islip, supra.

Accordingly, plaintiff's motion is denied.

FILED

MAR 30 2011

NEW YORK
COUNTY CLERK'S OFFICE

Conclusion

In accordance herewith, it is hereby:

ORDERED that plaintiff's motion for leave to amend is denied; and it is further

ORDERED that any requested relief not expressly addressed herein has

nonetheless been considered by the court and is denied; and it is further

ORDERED that this shall constitute the decision and order of the court.

Dated: New York, New York
March 29, 2011

So Ordered:



HON. JUDITH J. GISCHE, J.S.C.