

Healey v Axton Owner LLC
2011 NY Slip Op 33804(U)
July 6, 2011
Sup Ct, New York County
Docket Number: 1077721/2010
Judge: Saliann Scarpulla
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This opinion is uncorrected and not selected for official publication.

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

SALIANN SCARPULLA

19

PRESENT: _____
Justice

PART _____

Healey, Christine

INDEX NO. 107172/2010

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

- v -
Axton Ownership, LLC

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

FILED

Upon the foregoing papers, It is ordered that this motion

JUL 08 2011

NEW YORK COUNTY CLERK'S OFFICE

motion and cross-motion are decided in accordance with accompanying memorandum decision.

This constitutes the decision & order of the Court

Dated: 7/6/11

Saliann Scarpulla
SALIANN SCARPULLA 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: IAS PART 19

-----X
CHRISTINE HEALEY,

Plaintiff,

Index No. 107772/2010

Subm.: March 30, 2011

-against-

FILED

AXTON OWNER LLC,

Defendant,

JUL 08 2011

-----X

SALIANN SCARPULLA, J.:

NEW YORK
COUNTY CLERK'S OFFICE

This matter has been consolidated with index numbers 105995/10 and 106401/10, *Rebibo v Axton* and *Nebel v Axton*, respectively, into a class action¹ under index number 105995/2010. The Consolidated Class Action Amended Complaint was filed as of February 24, 2011. The prior actions were each brought against the landlord of 733 Amsterdam Avenue, New York, NY, defendant Axton Owner LLC (Axton) for: (i) money damages and treble money damages for rent overcharges, together with attorneys' fees; and (ii) a declaration that the dwelling units of plaintiffs (Rebibo, Nebel, and Healey) are, and remain, subject to the Rent Stabilization Law of New York (RSL)² until

¹The complaints of the plaintiffs arise out of essentially the same transactions and occurrences, and involve the same defendant.

²"RSL" refers generally to Title 26 of the Administrative Code of the City of New York, sections 26-501 through 26-520, as recodified by chapter 907 of the Laws of New York for the year 1985, constituting the New York City Rent Stabilization Law. See 9 NYCRR 2520.5 (a).

such time as the last tax benefits and exemptions under New York's J-51 program (J-51)³ expire, and the Units are properly deregulated.

It is undisputed that Axton applied for and received J-51 benefits as of 2007. As of August 14, 2008, all of the Units were registered with the Department of Housing and Community Renewal (DHCR) as Permanently Exempt from stabilization due to high rent vacancy, or, in common parlance, luxury decontrolled. As a result, there were alleged rent overcharges which remain the subject of the currently pending class action.

Axton previously moved to dismiss this complaint on the basis of the doctrine of primary jurisdiction, or, in the alternative, to stay the prior actions pending determination of administrative proceedings by the New York State Division of Housing and Community Renewal (DHCR). However, as this complaint has now been amended to reflect the above-referenced class action, the motion to dismiss is denied as moot.

Accordingly, it is hereby

ORDERED that the motion of defendant, Axton Owner LLC, to dismiss the complaints or stay the above-captioned actions is denied; and it is further

ORDERED that the defendant, Axton Owner LLC, is directed to respond to the Consolidated Class Action Amended Complaint, Index No. 105995/10, filed as of

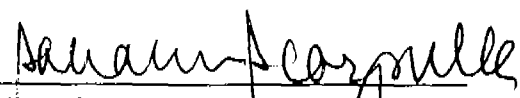
³The J-51 program refers to N.Y. Civil Code § 11-243, which addresses "Re-extension of exemption and tax abatement in regard to improvements of substandard dwellings, as well as RPTL § 489, which addresses "Exemption from taxation of alterations and improvements to multiple dwellings to eliminate fire and health hazards; abatement."

February 24, 2011, on the agreed submission date of July 12, 2011.

This constitutes the decision and order of the Court.

Dated: July 6, 2011
New York, New York

ENTER:


Hon. Saliann Scarpulla, J.S.C.

FILED

JUL 08 2011

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