

Apolonio v Haav 575 Realty Corp.

2013 NY Slip Op 33300(U)

August 26, 2013

Sup Ct, New York County

Docket Number: 450852/12

Judge: Andrea Masley

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: _____
Justice

PART 43

Index Number : 450852/2012
APOLONIO, SALVADOR
vs.
HAAV 575 REALTY CORP.
SEQUENCE NUMBER : 001
REARGUMENT/RECONSIDERATION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion tofor _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

*granted to the extent of the attached
decision.*

Conferred/heard 9/17/13 at 2pm

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

12 450852

U N F I L E D J U D G M E N T
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 EFile a "Request for Entry of Judgment", Proposed Judgment, and any supporting documents on the NYSCEF system.

RECEIVED
SEP 05 2013
IAS MOTION SUPPORT OFFICE
NYS SUPREME COURT-CIVIL

Dated: 9/18/13

[Signature] _____, J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE:MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

U N F I L E D J U D G M E N T

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 EFile a "Request for Entry of Judgment", Proposed Judgment, and any supporting documents on the NYSCEF system.

12 450852

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

SALVADOR APOLONIO,

Plaintiff,

HON. ANDREA MASLEY
 Judge, Civil Court

-against-

HAAV 575 REALTY CORP., ELYSEE INVESTMENT
 CO., a/k/a ELYSEE INVESTMENT COMPANY, AVI
 DISHI, a/k/a ABRAHAM DISHI, ARMANDO GUZMAN,
 HAIM YEHEZKEL, and ABRAHAM YEHEZKEL,
Defendants.

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

	<u>Papers</u>	<u>Numbered</u>
Motion		1

Pursuant to CPLR 2221(d), in this action for damages arising from overcharges on plaintiff Salvador Apolonio's rent-stabilized apartment at 575 West 172nd Street, #4A in Manhattan, plaintiff moves to reargue the order and judgment entered on June 6, 2013 and/or for clarification or modification of the order (the "Order"). The court found that liability was established and set the matter down for a hearing on damages and, to the extent that plaintiff's requests for relief were unclear or confusing to the court, for clarification by counsel. At plaintiff's request the hearing, set for August 5, 2013, was adjourned pending a determination of this motion.

The complaint states ten causes of action: (1) rent overcharges; (2) punitive damages for willful overcharges; (3) declaratory and injunctive relief arising from overcharges from vacancy leases; (4) declaratory and injunctive relief arising from overcharges from fraudulent DHCR registrations; (5) injunctive relief arising from overcharges from DHCR orders; (6) injunctive relief for repairs, restoration of services, and compliance with the Housing Maintenance Code; (7) an abatement based on

breach of the warranty of habitability; (8) an abatement based on breach of the lease; (9) treble damages arising from lead paint hazards in the apartment; and (10) attorneys' fees. As remedies, plaintiff seeks damages for overcharges, together with treble damages and interest; damages for breach of warranty of habitability and/or breach of lease, and a rent abatement of three times the rent charged; a declaration that the lease was illegal and fraudulent; and an injunction directing defendants to correct all violations and restore all services, and refund any rents collected.

In the Order, the court declared the lease between the parties void *ab initio* based on an illegal overcharge and awarded judgment of \$75,453.71 with interest. The court set the matter down for a hearing to calculate abatements, refunds, costs, and fees, including rent reduction pursuant to the DHCR order issued on November 20, 2008; to determine defendant's wilfulness and to calculate treble damages arising therefrom; to determine the abatement arising from lead paint in plaintiff's apartment; to determine any lead-related injuries to a nonparty child residing in the apartment; and to determine reasonable attorneys' fees. As plaintiff's demands for damages were deficient, the court determined that a hearing was expedient and necessary to calculate damages.

Plaintiff argues that all damages have been proven and asks that the court issue the judgment on papers only. Personal injury is not an issue, as plaintiff now states it does not seek damages for lead paint exposure on behalf of the nonparty child. According to plaintiff, the Order resolves only two of the ten causes of action and fails to state how judgment should be calculated. For instance, plaintiff argues that defendant's overcharge must be recalculated to reflect treble damages rather than interest. Plaintiff also argues that a determination of wilfulness is not required, as the

presumption of defendant's wilful rent over charge has been established and was never rebutted by the defaulting defendant. Lastly, plaintiff objects that notice to the defaulting defendant be dispensed with because it is not required. All of these issue could have and should have been resolved on August 5, 2013. Instead, plaintiff filed this motion.

22 NYCRR §202.46 (b) permits a party seeking damages on inquest to submit written statements of the witnesses, as plaintiff has done here. It bears repeating that liability has been established and the sole issue before the court is damages. Plaintiff cites to authority for the proposition that a hearing is not required. While a hearing is not required, if the inquest on papers are insufficient, then the court is compelled to conduct a hearing. Here, plaintiff has offered a paucity of figures or calculations arising from its numerous damage claims, and a hearing will afford counsel an opportunity to explain his damage calculations so the court may render a final judgment according to the law and the facts of this case. As to the reasonableness of attorneys' fees, the court must conduct a hearing with testimony and documentary evidence.

Contrary to plaintiff's motion, the Order resolves all of plaintiff's claims for injunctive relief and awarded \$75,453.71 with interest from May 31, 2011 which resolves his first cause of action. The only remaining issues are the amount of punitive damages for willful overcharges; abatements; and attorneys' fees.

Accordingly, it is

ORDERED that the motion to reargue is granted, and upon reargument, the Order is modified to strike the requirement of a hearing on the issue of willfulness; and it is further

ORDERED that the Order is modified to the extent that plaintiff is not required to

serve defendant a copy of this order with notice of entry; and it is further

ORDERED that, as to the sixth cause of action, defendant is directed to correct all violations as required by the Housing Maintenance Code and the Building Code, in plaintiff's apartment and common areas of the building; and it is further

ORDERED AND ADJUDGED that, as to the third and fourth causes of action, the lease between the parties is declared unlawful; and it is further

ORDERED AND ADJUDGED that, as to the fourth cause of action, the DHCR registration is null until such time as defendant files an account registration; and it is further

ORDERED AND ADJUDGED that rent is set at \$596.60 until such time as defendant files a proper registration with DHCR; and it is further

ORDERED that the matter is set down for a conference at 80 Centre Street, Part 43 on September 17, 2013 at 2pm when the court will take testimony as to the factual basis for the amount of the abatement arising from lead paint, punitive damages, and attorneys' fees.

Dated: 8/26/13


Andrea Masley, Civil Court Judge

12 450852

U N F I L E D J U D G M E N T
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 EFile a "Request for Entry of Judgment", Proposed Judgment, and any supporting documents on the NYSCEF system.