

Bolden v 512 W. 156th St. HDFC

2014 NY Slip Op 30260(U)

January 17, 2014

Supreme Court, New York County

Docket Number: 402693/2009

Judge: Lucy Billings

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: LUCY BILLINGS
J.S.C. Justice

PART 46

PATRICIA M. BOLDEN and TAJA P. BOLDEN

INDEX NO. 462693/2004

512 WEST 156TH STREET HDFC, MARTA GOMEZ, DEL-MAR
MANAGEMENT SERVICES INC., and GLADYS TORRES

MOTION DATE _____

MOTION SEQ. NO. 004

The following papers, numbered 1 to 3, were read on this motion ~~to~~ for summary judgment

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). <u>1</u>
Answering Affidavits — Exhibits _____	No(s). <u>2</u>
Replying Affidavits _____	No(s). <u>3</u>

Upon the foregoing papers, it is ordered ~~that this motion is~~ and adjudged that:

The court grants plaintiffs' motion for summary judgment in favor of plaintiff Taja P. Bolden and against defendant 512 West 156th Street HDFC to the extent set forth and otherwise denies plaintiffs' motion, pursuant to the accompanying decision. C.P.L.R. § 3212(b).

Court Clerk

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).

Dated: 1/17/14

Lucy Billings, J.S.C.

LUCY BILLINGS

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

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 46

-----x

PATRICIA M. BOLDEN and JAJA P. BOLDEN, Index No. 402693/2009

Plaintiffs

- against -

DECISION AND ORDER

512 WEST 156TH STREET HDFC, MARTA GOMEZ,
DEL-MAR MANAGEMENT SERVICES INC., and
GLADYS TORRES,

Defendants

-----x

LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Plaintiffs filed an overcharge complaint with the New York State Division of Community Renewal (DHCR) August 18, 2006, claiming defendant 512 West 156th Street HDFC had overcharged rent for their apartment in defendant HDFC's building since December 2003. Patricia Bolden commenced this action October 22, 2009, seeking to enforce DHCR orders issued in 2008 and claiming she and her co-tenant adult son Jaja Bolden had overpaid rent beginning in December 2006 through December 2008, totalling \$14,494.00, plus treble damages. C.P.L.R. § 213-a; N.Y.C. Admin. Code § 26-413(d)(2); 9 N.Y.C.R.R. § 2206.8(b); Riverside Equities, LLC v. New York State Div. of Hous. & Community Renewal, 58 A.D.3d 534, 535 (1st Dep't 2009). See Century Tower Assocs. v. State of New York Div. of Hous. & Community Renewal, 83 N.Y.2d 819, 823 (1994); Bradbury v. 342 W. 30th St. Corp., 84 A.D.3d 681, 683-84 (1st Dep't 2011); H.O. Realty Corp. v. State

of N.Y. Div. of Hous. & Community Renewal, 46 A.D.3d 103, 107-108 (1st Dep't 2007); 201 E. 81st St. Assocs. v. New York State Div. of Hous. & Community Renewal, 288 A.D.2d 89, 90 (1st Dep't 2001).

Defendants complain that Jaja Bolden was joined as a plaintiff without notice to them, but Patricia Bolden served a motion to join him on defendants' attorney, which the court granted in an order dated June 18, 2012, that the court also mailed to defendants' attorney. C.P.L.R. §§ 1001(a), 1002(a), 3025(b). DHCR recognized, and defendants have never disputed, that Jaja Bolden has been a co-tenant in the same apartment as Patricia Bolden. DHCR issued the orders that plaintiffs seek to enforce in both tenants' favor. In fact defendants themselves raised the point that each rent charge during 2007-2008 that plaintiffs claim exceeded the maximum collectible rent was paid by Jaja Bolden.

II. DEFENDANT AGENTS

The DHCR orders that plaintiffs now seek to enforce are against defendant 512 West 156th Street HDFC. Based on these orders, plaintiffs move for summary judgment against all defendants, but fail to show that defendants Gomez, Del-Mar Management Services Inc., or Torres was other than an agent for the disclosed principal, defendant 512 West 156th Street HDFC. Agents for a disclosed principal are not personally liable without explicit evidence of the agents' intent to substitute their liability for or add it to the principal's liability. JDF Realty v. Sartiano, 93 A.D.3d 410 (1st Dep't 2012); Ho Sports,

Inc. v. Meridian Sports, Inc., 92 A.D.3d 915, 916-17 (1st Dep't 2012); Star Video Entertainment v. J & I Video Distrib., 268 A.D.2d 423, 424 (1st Dep't 2000). The parties do not dispute that Gomez was an officer of defendant HDFC, Del-Mar Management Services was an agent for management of the building owned by defendant HDFC, and Torres was Del-Mar Management Services' employee. Plaintiffs present no evidence, however, that Gomez, Del-Mar Management Services, or Torres consented to liability for defendant HDFC's obligations. Citibank, N.A. v. Uri Schwartz & Sons Diamonds Ltd., 97 A.D.3d 444, 447 (1st Dep't 2012); 150 Broadway N.Y. Assoc., L.P. v. Bodner, 14 A.D.3d 1, 8 (1st Dep't 2004); PNC Capital Recovery v. Mechanical Parking Sys., 283 A.D.2d 268, 270 (1st Dep't 2001). Therefore the court denies plaintiffs' motion for summary judgment against defendants Gomez, Del-Mar Management Services, and Torres. C.P.L.R. § 3212(b) and (e).

III. DHCR'S DETERMINATION OF THE MAXIMUM COLLECTIBLE RENT

In an order dated April 15, 2008, DHCR determined that the maximum collectible rent for plaintiffs' apartment since December 2003 was \$125.43 per month. In an order dated December 19, 2008, DHCR found that Patricia Bolden was a successor rent controlled tenant to the former tenant, her father, who remained a rent controlled tenant of defendant HDFC through the conversion of defendant's building to a cooperative. In an order dated September 1, 2010, DHCR modified the maximum collectible rent to \$125.45.

Although defendants continue to protest that these orders are erroneous and that the law did not permit Patricia Bolden's father and Patricia Bolden to remain rent controlled tenants after the building's conversion, defendants have never appealed any of DHCR's orders. In fact, on October 7, 2010, defendant HDFC, which acknowledges that it is the owner of plaintiffs' apartment and the party against which DHCR issued its orders, applied to DHCR for an exemption of plaintiffs' apartment from rent regulation. This application provided defendant HDFC another opportunity to support defendants' view of the apartment's legal status as unregulated. In an order dated March 31, 2011, however, DHCR denied the owner's application, finding:

After consideration of all the evidence in the record,

The issues involved in this proceeding were previously adjudicated . . . on December 19, 2008. The owner's request for an order exempting the subject apartment from rent regulation is hereby denied on the principle of res judicata, as records on file reveal no evidence of any Petition for Administrative Review filed against the aforementioned Order. Accordingly, that Order is final, binding, and can not be disturbed.

Therefore, it is ordered that . . . this proceeding is terminated.

Aff. of Patricia Marguerite Bolden in Supp. Ex. K. Defendant HDFC did not appeal this order either.

Res judicata and collateral estoppel apply equally to bar defendant HDFC from using this judicial forum to attack the prior administrative agency determinations, as long as the agency employed "procedures substantially similar to those used in a court of law," as DHCR did. ABN AMRO Bank, N.V. v. MBIA Inc., 17

N.Y.3d 208, 226 (2011); Staatsburg Water Co. v. Staatsburg Fire Dist., 72 N.Y.2d 147, 153 (1988); Ryan v. New York Tel. Co., 62 N.Y.2d 494, 499 (1984); Metro-North Commuter R.R. Co. v. New York State Exec. Dept. Div. of Human Rights, 271 A.D.2d 256, 257 (1st Dep't 2000). See Gersten v. 56 7th Ave. LLC, 88 A.D.3d 189, 201-202 (1st Dep't 2011). In fact defendant HDFC admits that it now is precluded from appealing and attacking that order.

IV. THE COURT'S DETERMINATION OF AN OVERCHARGE

Finally, defendants point out that DHCR never actually determined that plaintiffs were overcharged rent. In any case, this court maintains concurrent jurisdiction to determine whether and how much the owner has overcharged the tenants. Thornton v. Baron, 5 N.Y.3d 175, 180-81 (2005); Downing v. First Lenox Terrace Assoc., 107 A.D.3d 86, 88 (1st Dep't 2013); Bradbury v. 342 W. 30th St. Corp., 84 A.D.3d 681, 683 (1st Dep't 2011); East W. Renovating Co. v. New York State Div. of Hous. & Community Renewal, 16 A.D.3d 166, 167 (1st Dep't 2005). In this case concerning rent controlled tenants, as DHCR itself instructed plaintiffs March 16, 2010, after it determined the maximum collectible rent for their apartment April 15, 2008, and notified them and defendant HDFC of its determination:

If the owner has collected more than the legal rent, you have the right to sue for damages. The New York City Rent Control Law does not give DHCR the authority to issue an order in overcharge cases that can be entered as a judgment. Therefore, you may have to proceed in court to collect any rent overcharge.

Reply Aff. of Patricia Marguerite Bolden and Jaja P. Bolden Ex. C, at 2. As reinforced by DHCR's own further order dated

September 1, 2010, after DHCR again determined the maximum collectible rent:

If the owner has collected more than the legal rent, the tenant(s) have the right to sue for damages. . . . The New York City Rent Control Law does not give DHCR the authority to issue an order in overcharge cases that can be entered as a judgment. Therefore, you may have to proceed in court to collect any rent overcharge.

Id. Ex. D. This order was DHCR's disposition of Patricia Bolden's overcharge complaint, ceding primary jurisdiction to the court to determine the amount of any overcharge. Gerard v. Clermont York Assoc., LLC, 81 A.D.3d 497, 498 (1st Dep't 2011); Wong v. Gouverneur Gardens Hous. Corp., 308 A.D.2d 301, 303 (1st Dep't 2003); Davis v. Waterside Hous. Co., 274 A.D.2d 318, 319 (1st Dep't 2000). The notice to which defendants refer as indicating such a complaint was under administrative review predates this order. Aff. of Gerald M. Pigott in Opp'n Ex. B.

Plaintiffs' records and defendant HDFC's records consistently show that during 2009 and 2010 rent of \$125.00-\$125.46 per month was paid for plaintiffs' apartment and thus no overpayment of rent occurred. Before then, \$600.00-\$750.00 per month was paid. Defendants do not dispute plaintiffs' calculation of a \$14,494.00 overcharge, reduced by the rent charges of \$125.45 per month for each month in 2012 and 2013 that plaintiffs have not paid rent to recoup the overcharge, a credit to defendant HDFC that plaintiffs concede. See 10th St. Assoc., LLC v. New York State Div. of Hous. & Community Renewal, 110 A.D.3d 605 (1st Dep't 2013); Mazelier v. 634 W. 135, LLC, 22 A.D.3d 361, 363 (1st Dep't 2005); Crimmins v. Handler & Co., 249

A.D.2d 89, 91 (1st Dep't 1998). Defendants only urge that the court may refuse to enforce DHCR's order setting the maximum collectible rent where the owner failed to appeal that order. The authority defendants rely on for such a proposition, however, actually holds that, even where DHCR erroneously issued its order against a nonowner of a tenant's apartment in a proceeding in which the owner was not a party, the court may not substitute the owner as the party against which the order may be enforced. Mazelier v. 634 W. 135, LLC, 22 A.D.3d at 363-64.

Consequently, plaintiffs demonstrate that defendant 512 West 156th Street HDFC is liable to Jaja Bolden for an overcharge of rent. The court therefore grants plaintiffs' motion for summary judgment against defendant 512 West 156th Street HDFC and awards plaintiff Jaja P. Bolden a judgment of \$14,494.00, reduced by \$125.45 for any month after April 2012 that plaintiffs have not paid rent or by a lesser amount equal to the amount plaintiffs have underpaid the monthly rent. C.P.L.R. § 3212(b). Although plaintiffs' overpayments date back to 2007 as well as 2008, the court awards Jaja P. Bolden interest on the \$14,494.00 at 9% per year from April 15, 2008, when DHCR first determined the maximum collectible rent. C.P.L.R. § 5001(b); Mohassel v. Fenwick, 5 N.Y.3d 44, 51-52 (2005); Bradbury v. 342 W. 30th St. Corp., 84 A.D.3d 681. At oral argument, plaintiffs withdrew their motion insofar as it sought treble damages.

This decision constitutes the court's order and judgment in favor of plaintiff Jaja P. Bolden and against defendant 512 West

156th Street HDFC for \$14,494.00 with interest at 9% per year from April 15, 2008, against which defendant HDFC may apply the credits as specified above. The court will mail copies to plaintiffs and to defendants' attorney.

DATED: January 17, 2014

Lucy Billings

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.

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).