

Hassan v 8 Ctr. Realty LLC

2016 NY Slip Op 30044(U)

January 8, 2016

Supreme Court, New York County

Docket Number: 155423/14

Judge: Joan M. Kenney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 8

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AINS HASSAN,

Plaintiff,

DECISIONS & ORDER
Index No. 155423/14

-against-

8 CENTRE REALTY LLC, "JOHN DOE" and/or
"JANE DOE",

Defendants.

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KENNEY, J.:

In this action seeking relief for alleged rent overcharges, defendant 8 Centre Realty LLC (8 Centre or defendant) moves: pursuant to CPLR 3211 (a) (1) and (a) (7), for an order dismissing plaintiff Ains Hassan's (Hassan) first and fourth causes of action; pursuant to CPLR 3211 (a) (7) for an order dismissing plaintiff's eighth cause of action; and for a grant of reasonable attorneys' fees. Plaintiff opposes and cross-moves, pursuant to CPLR 1013, for an order granting Hunain Dada (Dada), a prior leaseholder of the apartment, leave to intervene as a second plaintiff in this action.

FACTUAL BACKGROUND

Hassan alleges that, on January 1, 2011, he and his former roommate, Azmi Stringa (Stringa) entered into a one-year lease agreement with 8 Centre's predecessor in interest for the subject apartment at a monthly rent of \$1,995.00. Although Hassan was not named on the lease, he was a tenant, and was acknowledged as such by the building's managing agent. Aziz affirmation in further support, exhibit B. The lease provided was not a rent-regulated

lease. Hassan's tenancy was renewed in 2012 and in 2013. The monthly rent in the 2013 lease was \$2,195.00. Defendant refused to issue a fourth lease to Hassan upon the expiration of the 2013 lease, because defendant intended to renovate the building. Hassan re-located to a different apartment, and delivered the keys to defendant on February 14, 2014.

After seeking legal advice and obtaining records from the Department of Housing and Community Renewal (DHCR), Hassan discovered that the apartment allegedly was, and is, subject to rent stabilization. DHCR records show that the registered monthly rent went from \$418.15 in 1999 to \$1,700.00 in 2004. The registrations filed between 1999 and 2004 are missing the rental amounts for the subject apartment. The apartment was also listed as vacant for that entire time, and defendant has not, at any time, claimed to have made any capital improvements in the apartment. Notice of cross motion, exhibit F. However, the rent at the start of the "look-back" period of four years from the time this action was commenced was the 2011 rent, which was \$2,195.00. Notice of motion, exhibit B. The increases from that level were allegedly within the amount permitted by the rent stabilization board.

In his first cause of action, Hassan seeks a declaratory judgment that the apartment was subject to rent stabilization during and prior to his occupancy. In the second cause of action, he seeks a declaratory judgment that the apartment is currently

subject to rent stabilization. The fourth cause of action seeks recovery for rent overcharges, as well as treble damages pursuant to the rent-stabilization law, and punitive damages. The eighth cause of action seeks attorneys' fees as provided by statute.

This court previously dismissed so much of the complaint as sought possession of the premises, an injunction enjoining defendant from leasing the apartment to anyone other than him, and ordering that he be restored to the apartment (part of the second cause of action and the third cause of action). Hassan's fifth, sixth and seventh causes of action, based upon fraud and deceit were also dismissed. Notice of motion, exhibit A.

DISCUSSION

8 Centre seeks an order dismissing the remaining portions of the complaint, as well as attorneys' fees. Defendant maintains that the apartment became exempt from rent regulation on January 1, 2002, and was properly deregulated pursuant to High Rent Vacancy Decontrol. 9 NYCRR 2520.11 (r) (4). It further maintains that, even if the apartment remains subject to rent stabilization, there was no overcharge. 8 Centre relies on 9 NYCRR 2523.7 (b), which provides that the base date for rent records is four years prior to the date of the most recent registration for the apartment, or, in this case, four years prior to the lease of January 1, 2011. Thus, 8 Centre contends that it need only demonstrate that the 2011 rent was appropriate

when calculated based upon the rent from January 1, 2007, four years prior to the challenged lease. The rent on January 1, 2007, was \$1,597.50, as extrapolated from the amount of the subsequent lease, and as reported on the DHCR rent roll report. Defendant has not produced the lease from that period. The lease from July 1, 2007 to June 30, 2008 reveals a rent of \$1,665.39. Defendant then proceeds to demonstrate that, based upon a legal rent amount of \$1,597.50 on January 1, 2007, the rent charged to Hassan was appropriate, and was, in fact, lower than 8 Centre could have legally charged. Once the rent was over \$2,000 per month when Hassan became a tenant, defendant maintains that the apartment was no longer subject to rent stabilization. Further, even if it were, there was no overcharge, so Hassan has not suffered any damage.

8 Centre also denies that Hassan was a tenant in 2011, because his name was not on the lease. Rather, Stringa and Dada were on the lease. Hassan was on the lease together with Stringa for the lease term January 1, 2013 to December 31, 2013.

Hassan contends that he has demonstrated that there is a colorable claim of fraud regarding the validity of the base rent as of the look-back date, and that, therefore, the court must look at the prior history to determine whether the 2007 rent as registered was a legal rent. Further, 8 Centre did not demonstrate that the rent of the outgoing tenant exceeded the

threshold deregulation amount, as required. Thus, when the premises were rented on January 1, 2011, the apartment was still subject to rent stabilization because at the time the prior tenant vacated the apartment, the rent was below the \$2,000.00 threshold. See *Altman v 285 W. Fourth, LLC*, 127 AD3d 654 (1st Dept 2015). Defendant acknowledges that, in light of the First Department's determination in *Altman*, a rent-stabilized apartment can be deregulated only if the legal regulated rent for the departing tenant exceeds the deregulation threshold. However, it maintains that Hassan's rent never exceeded the legal regulated rent so Hassan cannot recover any damages. Defendant argues that this court's dismissal of Hassan's causes of action for fraud and deceit is a determination that Hassan has failed to set forth a colorable claim of fraud, so the four-year statute of limitations is applicable, and Hassan is limited to the four-year look-back period.

Defendant's argument is disingenuous. The elements of a cause of action for fraud are not the same as the showing that must be made to investigate whether the rent was in fact legal four years prior to Hassan's becoming a tenant. Compare *IDT Corp. v Morgan Stanley Dean Witter & Co.*, 63 AD3d 583, 586 (1st Dept 2009) (elements of common-law fraud are a material misrepresentation of fact; made with an intent to defraud; reasonably relied upon by the plaintiff; who suffered damage as a

result) and *Matter of Grimm v State of N.Y. Div. of Hous. & Community Renewal Off. of Rent Admin.*, 15 NY3d 358, 366-367 (2010) (tenant must show a colorable claim of a landlord's fraudulent deregulation scheme). Here, Hassan has shown that the rent for the subject apartment was raised from \$495.00 in 1999 to \$1,700 in 2004 without any explanation, and without any capital improvement to the apartment. Further, Hassan has also demonstrated that the increased rent for this apartment was not an isolated incident. Rather, other apartments in the same building also had dramatic rent increases without explanation. See notice of cross motion, exhibit F, apartments 3 and 4 at 24-25; apartment 5 at 21-23; apartment 15 at 21-22. While this evidence might not be dispositive, it warrants an investigation into whether the base rent date provides an appropriate legal rent from which to determine the later legal rent, or whether the default method for determining rent for the apartment should be utilized. *Grimm*, 15 NY3d at 366-367.

Defendant seeks attorneys' fees based upon the lease provision which, it claims, allows for attorneys' fees if it is successful. Even if defendant correctly construed the provision, in view of the determination above, any award of attorneys' fees would be premature. However, the lease provides that the tenant must reimburse the owner for: "Any legal fees and disbursements for legal actions or proceedings brought by Owner against You

because of a Lease default by You or for defending lawsuits brought against Owner because of your actions." This action is not an action brought by the owner against Hassan. Nor is it an action brought against defendant because of Hassan's actions. Rather, it is an action brought by Hassan against defendant because of defendant's alleged actions. Thus, there is no contractual basis for defendant to recover attorneys' fees from plaintiff.

Cross Motion

In his cross motion, Hassan seeks to allow his former roommate, Dada, to intervene as a plaintiff in this action. Dada was allegedly Hassan's roommate from January 2011 until August 2012. Hassan contends that they are similarly situated in that they both were overcharged rent while they occupied the apartment. Dada has lived in Houston, Texas, since 2012, and allegedly sought to intervene within a month of learning of this action. Dada aff, ¶ 9.

Defendant objects to adding Dada as a plaintiff, arguing that the leases show that Dada and Hassan were never roommates because Dada was a tenant from January 1, 2010 through August 2012, whereas Hassan was not on the lease until January 1, 2013. Defendant further maintains that there are no common questions of law or fact with Hassan's complaint. Defendant also argues that it will be prejudiced if Dada is permitted to intervene, because

the parties have engaged in costly and time-consuming motion practice since the commencement of this action, and defendant apparently is under the impression that it would have to go through the process again. In addition, defendant believes that allowing Dada to intervene would allow him to attempt to extend the look-back period for his overcharge claims.

Defendant's assertion that Dada was never Hassan's roommate is unpersuasive. Not only have both Dada and Hassan submitted affidavits asserting that they were roommates, but they also attest that the landlord declined to include Hassan on the lease. Moreover, there is a letter from defendant's property manager confirming that Hassan was a tenant since January 2011. Thus, this basis for denying intervention is rejected.

With respect to defendant's concern regarding re-litigating issues that were already determined in this action, there is no reason to believe that those issues will be raised again. They have been determined in this action, and are binding on Dada. Further, Dada has acknowledged that he is bound by those determinations. In addition, the proposed second amended complaint does not include the causes of action which have been dismissed. Aziz affirmation in further support, exhibit D.

Defendant next objects that, by intervening, Dada is seeking to take advantage of a longer look-back period. It is unclear whether Dada is in fact seeking such an advantage. However, even

if he is, defendant can raise that issue in the proper manner if it becomes evident that it is of concern, and at that time, the court can determine the appropriate time period for the inquiry. This concern does not serve as an adequate basis to deny Dada the benefit of this state's liberal allowances for intervention. See *Wells Fargo Bank, N.A. v McLean*, 70 AD3d 676 (2d Dept 2010); Siegel, NY Prac § 178 (5th ed).

CONCLUSION

Accordingly, it is hereby

ORDERED that defendant's motion to dismiss the complaint is denied; and it is further

ORDERED that plaintiff's cross motion is granted to the extent that Hunain Dada is granted leave to intervene as a party plaintiff in this action; and it is further

ORDERED that the summons and complaint in the above-entitled action be amended by adding Hunain Dada thereto as a party plaintiff; and it is further

ORDERED that the second amended complaint in the proposed form annexed to the cross-moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

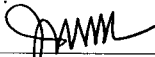
ORDERED that the defendant shall serve an answer to the second amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that the attorney for the intervenor shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and upon the Clerk of the Trial Support Office (Room 158), who are directed to amend their records to reflect such change in the caption herein; and it is further

ORDERED that counsel are directed to appear on March 3, 2016 for status conference in Room 304 located at 71 Thomas Street, NYC 10013 at which time an additional discovery schedule, if applicable, will be set, along with a new date upon which to file the Note of Issue and Certificate of Readiness.

Dated: January 8, 2016

ENTER:



JOAN M. KENNEY
J.S.C.