Tomic v 92 E. LLC
2016 NY Slip Op 30660(U)
April 13, 2016
Supreme Court, New York County
Docket Number: 151152/2015
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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LISA TOMIC and GORAN TOMIC,

Plaintiffs,

Index No. 151152/2015

-against-

DECISION/ORDER

92 EAST LLC,

Defendant.

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HON. CYNTHIA S. KERN, J.S.C.

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

Papers	Numbered
Notice of Motion and Affidavits Annexed..................................	1
Answering Affidavits...	2
Replying Affidavits..	3
Exhibits...	4

Plaintiffs commenced the instant action seeking, *inter alia*, reimbursement for alleged rent overcharges. Plaintiffs now move for an Order pursuant to CPLR § 2221 granting them leave to renew this court's decision denying both plaintiffs and defendant summary judgment. Plaintiffs' motion is resolved as set forth below.

The relevant facts are as follows. Defendant is the current landlord and owner of a residential apartment building located at 92 East Broadway, New York, NY 10002 (the "Building") having purchased the building on or about February 20, 2014. Plaintiffs are the current tenants of Apartment 4 (the "Apartment") in the Building. Plaintiffs first entered into possession of the Apartment in May 2007 pursuant to a fair market residential lease agreement (the "First Lease") with defendant's predecessor-in-interest, The Third Dynasty Realty Corp. ("Dynasty"), commencing May 1, 2007 and ending April 30, 2008 with a rent in the amount of

$1,700.00 per month. Over the next eight years, plaintiffs entered into no less than five fair market residential leases with Dynasty. Over that time, plaintiffs' rent was raised a total of $100. Plaintiffs now occupy the Apartment pursuant to a lease with defendant for a total rent of $1,872.00 per month.

Prior to plaintiffs' tenancy, the Apartment was registered as rent stabilized with a monthly rent of $267.23. According to defendant, after a former tenant vacated the Apartment in 2007, Dynasty, the former owner of the Building, retained the services of two construction companies at the cost of over $70,000 to renovate the Apartment. Defendant further contends that these renovations coupled with two statutory rent increases increased the legal regulated rent for the Apartment beyond $2,000.00. Thus, the Apartment was deregulated in 2007, due to a high rent vacancy. Plaintiffs then commenced the instant action alleging that the Apartment is still subject to the Rent Stabilization Law ("RSL") and was not properly deregulated in 2007. Accordingly, plaintiffs seek rent overcharges from May 1, 2007, treble damages and attorney's fees.

Thereafter, both the plaintiffs and defendant moved for summary judgment. Defendant argued that it was entitled to summary judgment on the ground that the Apartment is permanently exempt from rent stabilization as a result of the high rent vacancy decontrol that occurred prior to May 1, 2007. Further, defendant argued that it was entitled to summary judgment dismissing this action as the rent increases at issue are beyond the four-year statute of limitations for such claims. Plaintiffs disputed the deregulation of the Apartment in 2007. Specifically, plaintiffs challenged defendant's contention that approximately $70,000 worth of renovation work was done to the Apartment in 2007 to increase the legally allowable rent to over

$2,000 per month.

In a decision dated July 23, 2015, this court denied both motions for summary judgment (the "Decision"). This court found that the action was not time-barred because the RSL's four-year statute of limitations is limited to calculating a rent overcharge claim and does not apply when the court is determining whether an apartment is regulated in the first instance and that there were triable issues of fact, including whether the Apartment is exempt from rent stabilization based on the high rent vacancy decontrol said to have occurred in 2007. Plaintiffs now move for an Order pursuant to CPLR § 2221(e) granting them leave to renew this court's Decision and upon renewal, granting plaintiffs' motion for summary judgment.

A motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and...shall contain reasonable justification for the failure to present such facts on the prior motion." CPLR § 2221(e) (2)-(3). Plaintiffs assert that since the Decision was issued, there has been a change in the factual circumstances of the case. Specifically, plaintiffs have provided a letter dated December 29, 2015 (the "December 2015 Letter") from defendant's counsel to plaintiffs' counsel pursuant to which defendant offered to reimburse plaintiffs for rent overcharges in the amount of $741.00 for the years 2011 through 2015 based on the fact that "to date [they] have not received documentation from the prior owner to substantiate [the alleged apartment improvements that occurred prior to defendant's purchase of the property and prior to plaintiffs' occupancy of the subject premises], as the improvements occurred nearly a decade ago." Thus, the December 2015 Letter informed plaintiffs that "[w]ithout prejudice to any of Defendant's defenses in the

referenced action, the Defendant has retroactively registered the rents charged to Plaintiffs for the years 2011 to 2015 at the Division of Housing and Community Renewal ("DHCR")," thereby conceding that the Apartment is regulated under the RSL.

In the instant action, the court grants plaintiffs' motion to renew this court's Decision and, upon renewal, the court finds that plaintiffs are entitled to summary judgment on their first cause of action to collect rent overcharges from May 1, 2007, the beginning of their tenancy in the Apartment. It is undisputed that the statute of limitations for rent overcharge claims is four years pursuant to CPLR § 213-a, which provides as follows:

> An action on a residential rent overcharge shall be commenced within four years of the first overcharge alleged and no determination of an overcharge and no award or calculation of an award of the amount of any overcharge may be based upon an overcharge having occurred more than four years before the action is commenced. This section shall preclude examination of the rental history of the housing accommodation prior to the four-year period immediately preceding the commencement of the action.

This provision is a codification of RSL § 26-516(a)(2), which provides that "a complaint under this subdivision shall be filed...within four years of the first overcharge alleged and no determination of an overcharge and no award or calculation of an award of the amount of an overcharge may be based upon an overcharge having occurred more than four years before the complaint is filed." However, this court finds that the four-year statute of limitations is only applicable in cases where the landlord has filed annual rent registrations and is not applicable when no rent registrations were filed. The basis for this court's finding is the language in RSL § 26-516(a) which explicitly states that "[w]here the amount of rent set forth in the annual rent registration statement filed four years prior to the most recent registration statement is not challenged within four years of its filing, neither such rent nor service of any registration shall be

subject to challenge at any time thereafter." As that provision makes clear, the entire basis for the statute of limitations is based on a rent registration statement being filed every year. Indeed, the First Department has explained that the four-year statute of limitations "acts to preclude the admission of any evidence at such an inquiry that predates th[e] four-year period...[in order] to provide owners with a measure of relief as to records they had to keep on file concerning the rental history of stabilized premises." *H.O. Realty Corp. v. State Div. of Housing and Community Renewal*, 46 A.D.3d 103, 106 (1st Dept 2007). Therefore, in the absence of rent registrations filed annually, there is no basis for applying the four-year statute of limitations.

In the instant action, this court finds that the four-year statute of limitations does not apply because no rent registrations for the Apartment were filed since 2006 based on the landlord's unfounded position that the Apartment was deregulated due to the alleged improvements. Since defendant has conceded that it cannot prove that the Apartment was properly deregulated as it has no records of the alleged improvements, the whole basis for limiting this action to four years prior to the date plaintiffs filed their rent overcharge complaint does not apply. Indeed, the landlord should not be permitted to take advantage of the four-year statute of limitations and obtain a windfall when it failed to file any rent registrations as required by the RSL and cannot even prove that the Apartment should have been deregulated in the first instance.

Additionally, the court finds that upon renewal of this court's Decision, plaintiffs are entitled to summary judgment on their third cause of action for attorney's fees and interest pursuant to RSL § 26-516. Pursuant to RSL § 26-516(a)(4), "[a]n owner found to have overcharged may be assessed the reasonable costs and attorney's fees of the proceeding and

interest from the date of the overcharge at the rate of interest payable on a judgment pursuant to section five thousand four of the civil practice law and rules." As this court has found that plaintiffs have been overcharged by defendant, plaintiffs are entitled to costs and attorney's fees incurred in the instant proceeding as well as interest at the statutory rate from May 1, 2007. Further, as this court has determined that plaintiffs are entitled to attorney's fees pursuant to the RSL, it need not address plaintiffs' assertion that they are also entitled to attorney's fees pursuant to Real Property Law § 234 as plaintiffs may not collect the same attorney's fees twice.

However, the court finds that upon renewal of this court's Decision, plaintiffs are not entitled to summary judgment on their cause of action for treble damages against defendant. Pursuant to RSL § 26-516(a), treble damages shall be imposed against an owner upon a finding of a rent overcharge unless the owner establishes by a preponderance of the evidence that the rent overcharge was not willful. Treble damages amount to a substantial penalty, the purpose of which is to punish owners who deliberately and systematically charge tenants unlawful rents. *See H.O. Realty Corp.*, 46 A.D.3d at 103. The burden is on the owner to rebut the presumption of willfulness. *See Yorkroad Associations v. DHCR*, 19 A.D.3d 217 (1st Dept 2005).

In the instant action, the court finds that plaintiffs are not entitled to summary judgment on their cause of action for treble damages as there is an issue of fact as to whether the rent overcharge was "willful" under the law. Although it is now undisputed that the Apartment is regulated under the RSL and the court has found that plaintiffs were overcharged during their tenancy, it is not clear from the record before the court that defendant willfully overcharged plaintiffs. Defendant bought the Building in 2014 after plaintiffs had already been residing in the Apartment for approximately seven years. Defendant has affirmed that at that time, it

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understood that certain improvements totaling $70,000 had been made to the Apartment by the prior owner and thus believed the Apartment was no longer regulated under the RSL. Further, defendant has affirmed that it was only when it attempted to collect the records of the alleged improvements from the prior owner for purposes of the instant litigation that it realized that the prior owner had no such records. Thus, it has not been established, as a matter of law, that defendant "willfully" overcharged the plaintiffs. At such time when plaintiffs' claim for treble damages is resolved, this court will send the action to an inquest to determine the amount of damages and attorney's fees to which plaintiffs are entitled.

Accordingly, plaintiffs' motion is resolved to the extent set forth herein. This constitutes the decision and order of the court.

Dated: 4/13/16

Enter: CK
J.S.C.
CYNTHIA S. KERN
J.S.C.