| **Kuzmich v 50 Murray St. Acquisition LLC** |
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| 2017 NY Slip Op 31416(U) |
| July 3, 2017 |
| Supreme Court, New York County |
| Docket Number: 155266/16 |
| Judge: Carol R. Edmead |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 35

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JOHN KUZMICH, SANDRA MAY, JOSHUA SOCOLOW, IGNATIUS NAVASCUES, KENDTRICK CROASMUN, RISHI KHANNA, CAITLAN SENSKE, JAMIE AXFORD, JONATHAN GAZDAK, SUZY HEIMAN, MICHAEL GORZYNSKI, NIKESH DESAI, HEIDI BURKHART, BEN DRYLIE-PERKINS, KEIRON McCAMMON, LISA ATWAN, JENNIFER SENSKE RYAN, BRAD LANGSTON, ALEJANDRA GARCIA, LISA CHU, SCOTT REALE, DAN SLIVJANOVSKI, SHIVA PEJMAN, LAURIE KARR, ADAM SEIFER, ANAND SUBRAMANIAN, DARCY JENSEN, ELIN THOMASIAN, HAZEL LYONS, DAVID DRUCKER, HOWARD PULCHIN, JIN SUP LEE, JENN WOOD, NICHOLAS APOSTOLATOS, ALEX KELLEHER, BRIAN KNAPP, JEFF RIVES, JASON LEWIS, LAURA FIESELER HICKMAN, FRANKLIN YAP, and STEVEN GREENES,

Plaintiffs,

-against- Index No. 155266/16

50 MURRAY STREET ACQUISITION LLC,

Defendants.

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**CAROL R. EDMEAD, J:**

Defendant 50 Murray Street Acquisition LLC (Owner) moves, pursuant to CPLR 3212 (a), for summary judgment dismissing plaintiff tenants' (Tenants) first through sixth causes of action; granting Owner summary judgment on its first counterclaim, and declaring that Tenants' apartments are deregulated; and, granting Owner summary judgment on Owner's second counterclaim, and awarding a money judgment against Tenants for attorneys' fees and costs.

Tenants cross-move for summary judgment declaring that their apartments are subject to rent stabilization, that Tenants are rent stabilized tenants thereof, and that the rents charged to Tenants, since the commencement of their tenancies, have been, and continue to be, unlawful; and, for an order ordering a prompt trial to determine the amount of rent overcharges and other damages.

The legal issue before the court may be stated succinctly: is high rent deregulation applicable to buildings receiving Real Property Tax Law (RPTL) § 421-g benefits?

In general, rent stabilized apartments cease to be subject to rent regulation when their legal regulated rent and the tenant's yearly income in each of the two preceding years exceed a certain amount, $2,700 per month, in 2015 and $200,000, respectively. Rent Stabilization Law (RSL) § 26-504.3 (a) (2) and (3); *Matter of Park v New York State Div. of Hous. & Community Renewal*, 150 AD3d 105 (2017).

RPTL § 421-g, enacted in 1995, was intended to spur the conversion of non-residential buildings in lower Manhattan to residential use. It provides both real estate tax exemptions and tax abatement benefits when a building, used for non-residential purposes, is converted to at least 75% residential use. RPTL § 421-g (6) provides, in relevant part:

> "Notwithstanding the provisions of any local law for the stabilization of rents in multiple dwellings or the emergency tenant protection act of nineteen seventy-four, the rents of each dwelling unit in an eligible multiple dwelling shall be fully subject to control under such local law, unless exempt under such local law from control by reason of the cooperative or condominium status of the dwelling unit, for the entire period for which the eligible multiple dwelling is receiving benefits pursuant to this section."

The parties disagree as to whether, pursuant to section 421-g (6), the high rent decontrol provisions of the RSL are applicable during the benefit period.

Defendant argues that the phrase "such local law," in section 421-g (6), refers to the RSL as a whole, including the provisions for decontrol, and that, when the Legislature excepted condominium and cooperative apartments from the reach of rent regulation under this statute, it could also have excepted apartments subject to high rent decontrol, but did not do so. Defendant also points out that the language quoted above, from section 421-g (6), is identical to the language of RPTL § 421-a, and that, while, after RPTL § 421-a was enacted, the Legislature expressly excepted luxury deregulation in respect to apartments in buildings that received tax benefits pursuant to RPTL § 421-a (*see* RSL § 26-504.2), it has not done so in respect to buildings receiving tax benefits pursuant to RPTL § 421-g.

It is established that "'all parts of a statute are to be given effect and . . . a statutory construction which renders one part meaningless should be avoided.'" *Matter of Avella v City of N.Y.*, __NY3d__, 2017 WL 2427307, quoting *Rocovich v Consolidated Edison*, 78 NY2d 509, 515 (1991). Defendant's first argument is untenable, because, if adopted, it would render the introductory "[n]othwithstanding" phrase, which defendant ignores, superfluous. That phrase clearly refers to provisions in the RSL and the Emergency Tenant Protection Act of 1974, such as the high rent and high income decontrol provisions enacted in the Rent Regulation Reform Act of 1993 (RSL § 26-504.3), that are contrary to the regulation of rent. RPTL § 421-g provides that, regardless of those provisions, "the rents of each dwelling unit in an eligible multiple dwelling shall be fully subject to control under" the RSL, except for dwelling units that are exempted by the RSL, because they are cooperatives or condominiums.

Defendant's second argument also fails. RPTL § 421-g (6) provides that, after the tax benefits of section 421-g end,

> "such rents shall continue to be subject to such control, except that such rents that would not have been subject to such control but for this subdivision, shall be decontrolled if the landlord has included in each lease and renewal thereof . . . a notice . . . that the unit shall become subject to such decontrol upon the expirations of benefits pursuant to this section."

It is patent, therefor, that section 421-g, unlike section 421-a, imposed rent stabilization on units that, but for that statute, would have been excepted from rent stabilization, including units that would have been deregulated, as the result of high rent and high income. Accordingly, there was no need for the Legislature to provide for such rent regulation in a separate enactment.

The parties contend that the legislative history of RPTL § 421-g supports their respective positions. Inasmuch as section 421-g is unambiguous, as both parties also assert, the court needs not enter into that discussion. *See In Matter of RCN N.Y. Communications, LLC v Tax Commn. of the City of N.Y.*, 95 AD3d 456, 457 (1st Dept 2012), quoting *Matter of Lloyd v Grella,* 83 NY2d 537, 545-546 (1994).

Defendant argues that this court should defer to certain DHCR documents, which support defendant's position. Leaving aside the fact that those documents consist of private letters that were issued without notice or explanation, a court needs not defer to an administrative agency where the "question is one of pure statutory reading and analysis." *Matter of Ansonia Residents Assn. v New York State Div. of Hous. & Community Renewal,* 75 NY2d 206, 214 (1989); *see also Matter of KSLM -Columbus Apts., Inc. v New York State Div. of Hous. & Community Renewal,* 5 NY3d 303, 312 (2005).

In a post-briefing letter to the court, defendant urges it to follow the holding in the recently decided case of *Henry 85 LLC v Roodman Sup Ct, NY County, May15, 2017, Hagler, J., index No. 154499/2015.* The court declines to do so. The *Henry 85* court held that the high rent

decontrol provisions of the RSL are applicable to section 421-g housing, largely on two grounds. First, the court opined that, if the cooperative or condominium status of an apartment is the only exception to the rent control provision of section 421-g, then the primary residence requirement of the RSL would be rendered ineffective. Second, the court noted that, when the Legislature enacted the Rent Regulation Reform Act of 1993, it expressly excluded apartments in buildings receiving RPTL §§ 489 or 421-a tax abatements, but it has never specifically excluded buildings receiving section 421-g tax benefits from high rent deregulation. As to the first of these grounds, section 421-g controls the rent in covered apartments; it does not give tenants any additional rights. Thus, an owner would be free to refuse to renew a tenant's lease, and to seek to evict a tenant, pursuant to Rent Stabilization Code § 2524.4 (c), which is applicable to tenants who do not use their apartments as their primary residence. As to the second ground, there was no reason for the Legislature to amend the RSL, with reference to apartments covered by section 421-g, because, as noted above, that provision, itself, imposes rent regulation on the apartments to which it applies. including those that, otherwise, would be subject to luxury decontrol.

Accordingly, plaintiffs are entitled to the declaration that they seek, and to a trial to determine the amounts of rent that they have been overcharged. Inasmuch as plaintiffs' leases include a provision for attorneys' fees in favor of defendant, plaintiffs, the prevailing parties, here, are entitled to their attorneys' fees (Real Property Law § 234; *Paganuzzi v Primrose Mgt. Co.*, 268 AD2d 213, 213 [1st Dept 2000]), with interest from the date of the first overcharge. However, plaintiffs are not entitled to treble damages, because defendant's actions cannot be said to have been "willful." While, as explained above, this court does not defer to the DHCR advisory opinions concerning section 421-g (*see* Burden affirmation, exhibit F), it was not willful

for respondent to rely upon them.

Accordingly, it is hereby

ORDERED that the motion of defendant 50 Murray Street Acquisition LLC for summary judgment is denied; and it is further

ORDERED that the cross motion of plaintiffs John Kuzmich, Sandra May, Joshua Socolow, Ignatius Navas====, Kendrick Croasmun, Rishi Khanna, Caitlan Senske, Jamie Axford, Jonathan Gazdak, Suzy Heimann, Michael Gorzynski, Nikesh Desai, Heidi Burkhart, Ben Drylie-Perkins, Keiron McCammon, Lisa Atwan, Jennifer Senske Ryan, Brad Langston, Alejandra Garcia, Lisa Chu, Scott Reale, Dan Slivjanovski, Shiva Pejman, Laurie Karr, Adam Seifer, Anand Subramanian, Darcy Jensen, Elin Thomasian, Hazel Lyons, David Drucker, Howard Pulchin, Jin Sup Lee, Jenn Wood, Nicholas Apostolotos, Alex Kelleher, Brian Knapp, Jeff Rives, Jason Lewis, Laura Fieseler Hickman, Franklin Yap, and Steven Greenes for partial summary judgment is granted; and it is further

ADJUDGED and DECLARED that: (a) the apartments of said plaintiffs are subject to rent stabilization; (b) said plaintiffs are the rent stabilized tenants thereof; and (c) the rents charged to said plaintiffs since the commencement of their tenancies have been unlawful; and it is further

ORDERED that the Court, having on its own motion determined to consider the appointment of a referee to determine as follows, and it appearing to the Court that a reference to determine is proper and appropriate pursuant to CPLR 4317 (b), in that an issue of damages separately triable and not requiring a trial by jury is involved, it is now hereby

ORDERED that a Judicial Hearing Officer (JHO) or Special Referee shall be designated

to determine the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

(1) the amount that each plaintiff has been overcharged, said amounts to be calculated as follows: the lowest rent registered, pursuant to Rent Stabilization Code § 2528.3, for comparable apartments in the building located at 50 Murray Street in Manhattan, that were in effect on the date that said plaintiffs first occupied their apartments; or, if defendant did not register the rents of comparable apartments in said building, amounts based upon data compiled by the New York State Division of Housing and Community Renewal, using sampling methods for regulated housing accommodations;

(2) the amount of attorneys' fees and costs properly incurred by the plaintiffs in litigating this action; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited further than as set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119M, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this Court at www.nycourts.gov/supctmanh at the "references" link under "Courthouse Procedures") shall assign this matter to an available JHO/Special Referee to determine as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (which can be accessed at the "References" link

on the court's website ) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the plaintiff shall serve a pre-hearing memorandum within 24 days from the date of this order and defendants shall serve a pre-hearing memorandum within 20 days from service of plaintiffs' papers, and the foregoing papers shall be filed with the Special Referee Clerk at least one day prior to the original appearance date in part SRP fixed by the Clerk as set forth above; and it is further

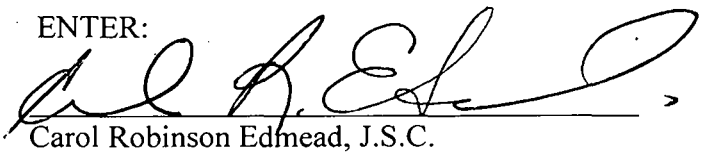
ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320 [a]) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc) and that the parties shall appear for the reference hearing, including with all such witnesses and evidence as they may seek to present, and shall be ready to proceed on the date first fixed by the Special Referee Clerk, subject only to any adjournment by the Special Referee Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue specified above shall proceed from day to day until completion; and it is further

ORDERED that counsel for Plaintiffs shall serve a copy of this Order with Notice of Entry within twenty (20) days of entry on all counsel.

Dated: July 3, 2017

ENTER:



Carol Robinson Edmead, J.S.C.

HON. CAROL R. EDMEAD
J.S.C.