

Goldstein v P Assoc.
2017 NY Slip Op 31474(U)
July 11, 2017
Supreme Court, New York County
Docket Number: 154584/16
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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EAMON SAUL KELLY GOLDSTEIN,

Plaintiff,

-against-

Index No. 154584/16

P ASSOCIATES, STELLA SCHWARTZ, LEONARD
and HARRIET KREUTER, and SMS
MANAGEMENT LLC,

Defendants.

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CAROL R. EDMEAD, J:

Motion sequence Nos. 001 and 002 are consolidated for disposition. In motion sequence No. 001, plaintiff Eamon Saul Kelly Goldstein moves for summary judgment declaring that: (a) apartment 2FW (Apartment), in the building located at 428 East 14th Street in Manhattan (Building), is rent stabilized; (b) the legal rent-stabilized rent for the Apartment is \$632.01 per month; (c) plaintiffs overcharged plaintiff; (d) - (e) defendant P Associates, the owner of the Building, is liable to plaintiff in the amount of \$138,946.35, plus attorneys' fees and interest, as well as for treble damages; and (f) defendants are precluded from introducing any further documentary or other evidence in response to plaintiff's September 21, 2016 discovery demands. In motion sequence No. 002, defendants P Associates, Stella Schwartz, Leonard Kreuter, Harriet Kreuter, and SMS Management LLC (SMS) move for summary judgment: (a) determining that the four year rule and look-back period set forth in CPLR 213-a, Rent Stabilization Law (RSL) § 26-516 (a) and (g), and Rent Stabilization Code § 2526.1 (a) (2), for residential overcharge cases, applies in this action; (b) determining that plaintiff was not overcharged; and (c) permitting

defendants to amend the 2013 DHCR rent registration for the Apartment. The individual defendants are the principals of P Associates. SMS is the managing agent for the Building.

As an initial matter, defendants acknowledge that the Apartment is subject to rent stabilization, and represent that the apartment was erroneously registered as exempt from regulation, by the prior managing agent for the Building. Defendants have offered plaintiff a rent-stabilized lease.

CPLR 213-a provides:

“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.”

See also Rent Stabilization Law (RSL) § 26-516 (a) (2). Plaintiff commenced this action on May 31, 2016. Accordingly, plaintiff may not base a claim of overcharge on the rental history of the Apartment prior to the commencement of plaintiff’s tenancy, on June 1, 2012. At that time, plaintiff’s initial one-year lease provided for a monthly rent of \$1,850.00. McAdams affirmation, exhibit 3 at 18. Prior to the commencement of this action, defendants failed to file registration statements for the Apartment in 2013, or thereafter. Accordingly, rent for the Apartment was frozen, pursuant to RSL § 26-517 (e), which provides:

“[t]he failure to file a proper and timely initial or annual rent registration statement shall, until such time as such registration is filed, bar an owner from applying for or collecting any rent in excess of the legal regulated rent in effect on the date of the last preceding registration statement”

Defendants’ late filing, in 2016, of registration statements for 2014, 2015, and 2016, in 2016 had only prospective effect. *Matter of Cardona v New York State Div. of Hous. & Community Renewal*, 214 AD2d 393, 394 (1st Dept 1995). Accordingly, plaintiff’s rent was frozen at the

inception of his tenancy.

From June 1, 2013 through May 31, 2014, plaintiff's rent was increased to \$1942.50 per month. From June 1, 2014 through July 2016, plaintiff was charged \$2,039.63 per month. On July 27, 2016, Tara Reece, who is employed by SMS, sent plaintiff a check in the amount of \$557.13, representing the amount plus interest that she believed him to have been overcharged, based on the erroneous assumption that plaintiff's rent could be raised, absent properly submitted registration statements. Plaintiff returned the check. In sum, from June 1, 2013 through July 2016, plaintiff was overcharged a total of 6,040.38 ($[\$92.50 \times 12 = \$1,110] + [\$189.63 \times 26 = \$4,930.38]$).

With regard to setting the rent prospectively, courts are not limited to evidence of the four years preceding the commencement of a lawsuit. *Gerard v Clermont York Assoc. LLC*, Sup Ct, NY County, March 30, 2017, Edmead, J., Index No. 101150/2010; *see also Matter of H.O. Realty Corp. v State of N.Y. Div. of Hous. & Community Renewal*, 46 AD3d 103, 108-109 (1st Dept 2007) (evidence as to willfulness of overcharge not limited to four previous years); *East W. Renovating Co. v New York State Div. of Hous. Renewal & Community Renewal*, 16 Ad3d 166, 167 (1st Dept 2005) (evidence relevant to regulatory status of apartment not limited to four previous years). Here, however, plaintiff's own exhibits include registration statements showing that the legal regulated rent of the tenant in the Apartment, immediately preceding plaintiff, was \$1,786.66 in 2011, and \$1,826.86 in 2012, and that the tenant paid preferential rents of \$1,600.00 and \$1,636.00 in those years. McAdams affirmation in support, (unmarked) exhibit C at 79. Moreover, plaintiff's contention, that registration statements were not filed for many years, is refuted by exhibit C, which shows such statements going back continuously to 1984.

Accordingly, there is no evidence to support a determination that the prospective rent should be set at any rate lower than would be consistent with proper registration statements late-filed for 2013 through 2016.

Plaintiff's leases included a provision for P Associates to recover its attorneys' fees, if it prevails in an action alleging that plaintiff violated his lease. Accordingly, as the prevailing party in a lawsuit brought because P Associates sought to evict him, plaintiff is entitled to his attorneys' fees. *See* Real Property Law § 234; *North Star Graphics v Spitzer*, 135 AD2d 401, 403-404 (1st Dept 1987).

Inasmuch as there is no justiciable controversy as to the rent-stabilized status of the Apartment, the court will not issue a declaration. *See Jonas v National Life Ins. Co.*, 147 AD3d 610, 612 (1st Dept 2017).

Accordingly, it is hereby

ORDERED that plaintiff Eamon Saul Kelly Goldstein's motion for summary judgment is granted to the extent that plaintiff is granted judgment against defendant P Associates in the amount of \$6,040.38, together with interest at the statutory rate from June 1, 2013, together with costs and disbursements, as taxed by the Clerk upon the submission of an appropriate bill of costs; and plaintiff's motion is otherwise denied; and it is further

ORDERED that defendants' motion is granted to the extent that defendants are permitted to file with the New York State Division of Housing and Community Renewal a late registration statement for 2013, for apartment 2FW in the building located at 428 East 14th Street in Manhattan, and defendants' motion is otherwise denied; and it is further

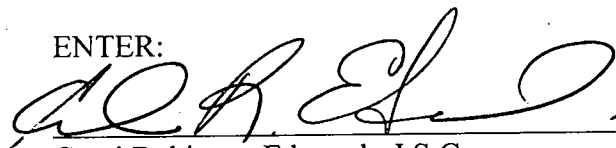
ORDERED that the determination of attorney's fees is hereby referred to the Hon. Ira Gammerman to **hear and determine**. And it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry on defendant and the Special Referee Clerk, Room 119M, within 30 days of entry to arrange a date for the reference to J.H.O. Ira Gammerman.

This constitutes the decision and order of the Court.

Dated: July 11, 2017

ENTER:



Carol Robinson Edmead, J.S.C.

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