

Collazo v Netherland Prop. Assets LLC
2017 NY Slip Op 31709(U)
March 6, 2017
Supreme Court, New York County
Docket Number: 157486/2016
Judge: David B. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: COHEN, DAVID B. Justice

PART 58

COLLAZO, DANIEL

INDEX NO. 157486/2016

MOTION DATE 12/07/2016

- v -

NETHERLAND PROPERTY ASSETS LLC

MOTION SEQ. NO. 001

The following papers, numbered 1 to ... were read on this application to/for ... Notice of Motion/ Petition/ OSC - Affidavits - Exhibits ... Answering Affidavits - Exhibits ... Replying ...

Upon the foregoing papers, it is

Decided that the motion to dismiss is granted in accordance with the attached decision and order.

DATE: 3/6/2017

[Signature] COHEN, DAVID B., JSC

- 1. CHECK ONE : [X] CASE DISPOSED [] NON-FINAL DISPOSITION
2. APPLICATION : [X] GRANTED [] DENIED [] GRANTED IN PART [] OTHER
3. CHECK IF APPROPRIATE : [] SETTLE ORDER [] SUBMIT ORDER [] DO NOT POST [] FIDUCIARY APPOINTMENT [] REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 58

-----X
DANIEL COLLAZO, MICHELLE COLLAZO, CHRISTOPHER
ORTIZ, ANGELA WU, RENANA BEN-BASSAT, JONATHAN
ROSS, BENJAMIN SHEFTER, MICHAEL SUH, TOBIN JAMES
WEISS, HOLLY WEISS, GABRIEL KRETZMER-SEED, NINA
KRETZMER-SEED, CATHERINE ELLIN, NIURKA PADILLA,
DIANA POTTS, TIA TRATE, TYSON COLLAZO, RITA
LOMBARDI, YANIRA SANCHEZ, DARIEL SANCHEZ, YISRAEL
MEIR LINDENBAUM, SHARON GORDON, RUSSELL POLTRACK,
MEGAN BOYCE, ELAN KATTAN, SHOSHANA COHEN, DUSTIN
GUTIERREZ, MELISSA SCHOLTEN-GUTIERREZ, JONATHAN
ABIKZER, ALEXANDRA ABIKZER

DECISION/ORDER
Index No. 157486/2016

Plaintiffs,

-against-

NETHERLAND PROPERTY ASSETS LLC, PARKOFF OPERATING
CORP.,

Defendants.

-----X
HON. DAVID B. COHEN, J.:

The cause of action seeking a declaration that plaintiffs' apartments are subject to rent stabilization, setting the proper rent amount, and related causes of action such as rent overcharge and the validity of the free-market rent are questions best for DHCR. Although, this Court clearly has concurrent jurisdiction with DHCR (*see Downing v First Lenox Terrace Assoc.*, 107 AD3d 86 [1st Dept 2013], *affd sub nom. Borden v 400 E. 55th St. Assoc., L.P.*, 24 NY3d 382 [2014]) here "the doctrine of primary jurisdiction is intended to co-ordinate the relationship between courts and administrative agencies to the end that divergence of opinion between them not render ineffective the statutes with which both are concerned, and to the extent that the matter before the court is within the agency's specialized field, to make available to the court in reaching its judgment the agency's views concerning not only the factual and technical issues involved but also the scope and meaning of the statute administered by the agency" (*Davis v Waterside Hous. Co., Inc.*, 274 AD2d 318 [1st Dept 2000]). Although, plaintiffs cited three cases where the Appellate Division ruled that the Supreme Court should retain jurisdiction, in each of those cases, the Appellate Division stated that there was a specific reason to retain jurisdiction, namely that the cases were putative class actions and

DHCR cannot certify a class action; and addressed legal issues left open after the Court of Appeals' decision in *Roberts v Tishman Speyer Props., L.P.*, 13 NY3d 270, 280 [2009] that should be addressed by the Courts in the first instance. Here, this matter was not brought as a putative class action and does not contain any questions of first impression. Conversely, the questions raised about the applicability of the rent stabilization law and the proper amount of rent is within the agency's specialized experience and technical expertise.

In addition, plaintiffs' cause of action under GBL 349 is dismissed. To properly allege a cause of action under this statute, plaintiff must demonstrate that the acts or practices have a broader impact on consumers at large. Private contract disputes do not fall within the ambit of the statute (*Oswego Laborers' Local 214 Pension Fund v Mar. Midland Bank, N.A.*, 85 NY2d 20, 25 [1995] citing, *Genesco Entertainment v Koch*, 593 F Supp 743, 752 [negotiation for rental of Shea Stadium was a "'single shot transaction'", not a typical consumer transaction and therefore not covered by section 349]). In *Aguaiza v Vantage Properties, LLC* (69 AD3d 422 [1st Dept 2010]), the Court held that private disputes between landlords and tenants, are "not consumer-oriented conduct aimed at the public at large, as required by the statute" (*id.* at 423). Here, plaintiffs' allegations relate to the private dispute between a tenant and a landlord concerning a lease. Thus, plaintiffs' facts do not support a consumer-related transaction within the ambit of GBL 349.

Accordingly, it is therefore

ORDERED, that defendants' motion is granted and this action is dismissed.

DATE : 3/6/2017


COHEN, DAVID B., JSC