

DeJesus v West Side Marquis LLC
2017 NY Slip Op 32364(U)
November 13, 2017
Supreme Court, New York
Docket Number: 151122/2017
Judge: Erika M. Edwards
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK

NATASSIA DeJESUS, and CLEMIRE DePERCIN

Index No.: 151122/2017

Plaintiffs,

DECISION/ORDER

-against-

Motion Sequence 001

WEST SIDE MARQUIS LLC, COLGATE LEASING
 LLC, RIVIERA LEASING LLC, SURF LEASING
 L.P., SYRACUSE LEASING LLC, REGENT
 LEASING L.P., NORTH CAROLINA LEASING
 L.P., MINNESOTA LEASING LLC, MAINE
 LEASING LLC, KINGS HIGHWAY PROPERTY
 LLC, MARTINIQUE REALTY DELAWARE LLC.,

Defendants.

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

Papers	Numbered
Notice of Motion and Cross-Motion and Affidavits/ Affirmations/Memos of Law annexed	1, 2
Opposition Affidavits/Affirmations and Memo of Law annexed	3
Reply Affidavits/Affirmations/Memos of Law annexed	4, 5

ERIKA M. EDWARDS, J.S.C.:

Plaintiffs Natassia DeJesus (“DeJesus”) and her father, Clemire DePercin (“DePercin”), (collectively “Plaintiffs”) filed this action against Defendants essentially seeking a declaration that the proper legal regulated rent for their apartment is no more than \$694.29, that the lease offered by Defendants is invalid and that a 2006 Stipulation purporting to establish the legal rent as \$500 per room per month is void as against public policy for purporting to waive rent stabilization rights. DeJesus claims that she and DePercin reside in the apartment and they should be recognized as rent stabilized tenants. DeJesus claims that she is the lawful successor to her deceased grandfather’s tenancy and her grandfather was the lawful tenant of record at the time when the building exited the Mitchell-Lama program and the apartments became subject to rent stabilization regulations. Plaintiffs claim that the legal regulated rent for their apartment is \$694.29, that they are not seeking to pay this amount as the preferential rent, but that DeJesus is entitled to a renewal lease in her name for no more than this amount based on her independent established tenancy. Defendants answered together and asserted various affirmative defenses and counterclaims.

Defendants move for partial summary judgment in their favor on their First and Second Counterclaims in their Answer for declarations that DHCR's December 29, 2006 order and the Settlement Agreement, dated December 1, 2006, are valid and enforceable, and establish the lawful basis for calculating the legal regulated rent of the subject apartment, and on Plaintiffs' Second Cause of Action for a declaration that the 2006 Settlement Agreement is void and on Plaintiffs' Fourth Cause of Action for attorney's fees. Plaintiffs oppose the motion and cross-move for partial summary judgment on their First Cause of Action for a declaration that the legal regulated rent is no more than \$694.29 and that the lease offered by Defendants is invalid. The court grants Defendants' motion and denies Plaintiffs' cross-motion in their entirety.

To prevail on a motion for summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824, 833 [2014]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The submission of evidentiary proof must be in admissible form (*Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1067-68 [1979]). The movant's initial burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party (*Jacobsen*, 22 NY3d at 833; *William J. Jenack Estate Appraisers and Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013]).

If the moving party fails to make such prima facie showing, then the court is required to deny the motion, regardless of the sufficiency of the non-movant's papers (*Winegrad v New York Univ. Med. Center*, 4 NY2d 851, 853 [1985]). However, if the moving party meets its burden, then the burden shifts to the party opposing the motion to establish by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure to do so (*Zuckerman*, 49 NY2d at 560; *Jacobsen*, 22 NY3d at 833; *Vega v Restani Construction Corp.*, 18 NY3d 499, 503 [2012]).

Summary judgment is "often termed a drastic remedy and will not be granted if there is any doubt as to the existence of a triable issue" (Siegel, NY Prac § 278 at 476 [5th ed 2011], citing *Moskowitz v Garlock*, 23 AD2d 943 [3d Dept 1965]).

Based on the evidence presented, the court determines that Defendants demonstrated their entitlement to partial summary judgment in their favor on their First and Second Counterclaims and on Plaintiffs' Second and Fourth Causes of Action. Plaintiffs failed to demonstrate their entitlement to summary judgment on their First Cause of Action and failed to raise any material issues of fact in dispute to preclude summary judgment in Defendants' favor on the above-mentioned claims. Here, the evidence demonstrates that DHCR's 2006 order, which memorialized and incorporated by reference the terms of the 2006 Settlement Agreement, are both valid and enforceable, and they establish the lawful basis for calculating the legal regulated rent of the subject apartment. The Settlement Agreement is not void and the DHCR order settled an active and valid dispute between the parties and was based on the law in effect at the time. Furthermore, Plaintiffs have not established their entitlement to attorney's fees or costs.

DeJesus' grandfather signed the Settlement Agreement which established that the legal rent was \$500 per room per month for his apartment. However, he only had to pay the preferential rent (Actual Collectible Rent or "ACR"). Such rent was granted to him as a signatory on the Agreement. The rent stabilized renewal lease in effect at the time of DeJesus' grandfather's death established that the legal regulated rent for the apartment was \$2,194 per month, but he was only required to pay the ACR of \$465.20 per month as long as he was a tenant in the apartment. Although Defendants accepted DeJesus as the successor to the apartment as the rent stabilized tenant of record, she was not accepted as an ACR successor. DeJesus is not entitled to pay her grandfather's lower preferential rent and neither Plaintiff qualifies as an ACR successor under the terms of the Settlement Agreement. Defendants offered DeJesus a rent stabilized lease in her own name, but she refused to sign it. She is entitled to be re-offered a rent stabilized lease in her own name, but she must pay the legal stabilized rent based on the 2006 DHCR order and Settlement Agreement signed by her grandfather. The court considered all of Plaintiffs' arguments to the contrary and find them to be unpersuasive.

Therefore, for the foregoing reasons, the court grants Defendants' motion for partial summary judgment in their favor on their First and Second Counterclaims in their Answer and on Plaintiff's Second and Fourth Causes of Action. The court denies Plaintiffs' cross-motion for partial summary judgment in Plaintiffs' favor on their First Cause of Action.

As such, it is hereby

ORDERED that the court grants Defendants' partial summary judgment motion on their First and Second Counterclaims in their Answer and on Plaintiff's Second and Fourth Causes of Action and the court directs the clerk to enter judgment in Defendants' favor as against Plaintiffs on Defendants' First and Second Counterclaims in their Answer and on Plaintiff's Second and Fourth Causes of Action; and it is further

ORDERED, ADJUDGED and DECLARED that DHCR's December 29, 2006 order is valid and enforceable, and constitutes the lawful basis for calculating the legal regulated rent of the subject apartment; and it is further

ORDERED, ADJUDGED and DECLARED that the Settlement Agreement, dated December 1, 2006, is valid and enforceable, and constitutes the lawful basis for calculating the legal regulated rent of the subject apartment; and it is further

ORDERED that the court denies Plaintiffs' cross-motion for partial summary judgment on their First Cause of Action for a declaration that the legal regulated rent is no more than \$694.29 and that the lease offered by Defendants is invalid; and it is further

ORDERED that, as there are remaining claims, the parties must appear for a preliminary conference on January 25, 2018, at 9:30 a.m., in Part 47, located at 80 Centre Street, Room 320, New York, New York.

Date: November 13, 2017



HON. ERIKA M. EDWARDS