

Payton v First Lenox Terrace Assoc. LLC
2018 NY Slip Op 31442(U)
June 29, 2018
Supreme Court, New York County
Docket Number: 452790/2017
Judge: Robert D. Kalish
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ROBERT D. KALISH PART IAS MOTION 29EFM

Justice

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GEOFFREY PAYTON, INDEX NO. 452790/2017
Plaintiff, MOTION DATE 7/10/2018
MOTION SEQ. NO. 001

- v -

FIRST LENOX TERRACE ASSOCIATES LLC. and HAMPTON
MANAGEMENT CO.,

Defendants.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 13,
14, 15, 17

were read on this motion to/for DISMISS

Upon the foregoing documents, it is ORDERED that the instant motion to dismiss, pursuant to
CPLR 3211 (a) (2), is granted for the reasons stated herein:

BACKGROUND

Plaintiff Geoffrey Payton alleges, in sum and substance, that his current apartment, Apt.
5M at 10 West 135th Street, New York, NY 10037, was unlawfully and willfully deregulated
prior to his taking possession of the apartment in 2010. Plaintiff alleges the following causes of
action:

- 1) Declaratory judgment declaring that his apartment is "subject to the Rent Stabilization Law and Code, and determining the amount of the legal regulated rents for their respective apartments";
- 2) Declaratory judgment that Plaintiff has been "overcharged pursuant to NYC Adm Code § 26-512, and that he is entitled to a refund of overcharges collected, plus treble damages and interest because the overcharges were willful";
- 3) Declaratory judgment that "any renewal lease forms provided to him by Defendants are invalid and unlawful; enjoining Defendant ... from offering lease renewals in violation of the terms of the Rent Stabilization Law and Code";
- 4) Violation of General Business Law § 349 (h); and
- 5) Attorney Fees.

Defendant moves to dismiss the complaint arguing that, based on the doctrine of primary jurisdiction, this Court should dismiss the action so that it can be litigated before the Division of Housing and Community Renewal (DHCR), as the instant action presents matters within the province and specialized expertise of DHCR.

Plaintiff opposes the motion arguing that the action should proceed in the forum of Plaintiff's choice, pursuant to the doctrine of prior jurisdiction. Plaintiff further argues that "[p]ursuing this claim at D.H.C.R. would further elongate this process, while eliminating any means Plaintiff has of obtaining discovery, prosecute additional claims in concert, or obtain a stay." (Memo in Opp. at 8.) Plaintiff further argues that the rationale behind the doctrine of primary jurisdiction does not apply to the instant case given "the straightforwardness" of the instant complaint.

DISCUSSION

"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."

(*Capital Tel. Co. v Pattersonville Tel. Co.*, 56 NY2d 11, 22 [1982].) "While concurrent jurisdiction does exist, where there is an administrative agency which has the necessary expertise to dispose of an issue, in the exercise of discretion, resort to a judicial tribunal should be withheld pending resolution of the administrative proceeding." (*Davis v Waterside Hous. Co.*, 274 AD2d 318, 318–19 [1st Dept 2000].)

Plaintiff urges the Court to "exercise its discretion to retain jurisdiction" because Plaintiff would prefer, for various enumerated reasons, to litigate the instant dispute before this Court, and because Plaintiff contends that the case is so "straightforward" that the specialized expertise of the DHCR is not warranted.

While there can be no dispute as to this Court having concurrent jurisdiction with the DHCR, there can also be no question that the issues of whether there was a rent overcharge and whether the apartment in question was improperly deregulated—the central issues in this action—are most certainly within the specialized field and expertise of the DHCR.

In 1983, the state legislature "designated DHCR 'the sole administrative agency to administer the regulation of residential rents' under the rent control and rent stabilization statutes, and in 1985 additionally granted DHCR authority to amend the Rent Stabilization Code (a body of regulations previously administered by a private association of property owners)." (*Rent Stabilization Ass'n of New York City, Inc. v Higgins*, 83 NY2d 156, 165 [1993], quoting Omnibus Housing Act, L.1983, ch. 403, § 3.) Since then, the courts having recognized the DHCR as having "expertise in rent regulation" and courts have accordingly referred cases to be heard before the agency—rather than the courts in the first instance—pursuant to the doctrine of primary jurisdiction. (*Olsen v Stellar W. 110, LLC*, 96 AD3d 440, 442 [1st Dept 2012].)

The Court recognizes that there are available provisions for discovery in the New York State Supreme Court which are not available before DHCR and that many litigants complain of a lengthy, backlogged process of adjudication at the DHCR compared to litigating before the Supreme Court. However, such differences and complaints are not sufficient reasons for the Court to disregard the judicially recognized expertise of the DHCR.

There may, however, be circumstances where retention of jurisdiction in a rent regulation case is appropriate where a court has a “specific reason to retain jurisdiction” such as the action being brought as a putative class action or where the matter presents questions of first impression. (*Collazo v Netherland Prop. Assets LLC*, 2017 NY Slip Op 31709[U], at *3 [Sup Ct, NY County 2017] [Cohen, J.], *affd*, 155 AD3d 538 [1st Dept 2017], *lv to appeal granted*, 2018 NY Slip Op 75021 [Ct App June 14, 2018].) This case does not present such a situation.

This Court has on previous occasion determined that the issue of an apartment’s regulatory status and potential rent overcharges should be decided by the DHCR, “given its expertise in rent regulation.” (*Davidson v 730 Riverside Dr., LLC*, 2015 NY Slip Op 31714[U], at *10 [Sup Ct, NY County 2015] [citing *Olsen*].) The First Department has recently reaffirmed that it is an appropriate exercise of a motion court’s discretion to have rent overcharge claims decided by the DHCR “in the first instance.” (*Collazo*, 155 AD3d 538 [citing *Olsen*].)

Based upon the foregoing, Defendant’s motion to dismiss the complaint is granted. As this Court is dismissing the complaint, this Court need not consider the branches of the instant motion seeking alternative relief.¹

¹ The Court notes, however, that Plaintiff withdraws his fourth cause of action, without prejudice, for a violation of General Business Law § 349. (Memo in Opp. at 13.)

CONCLUSION

Accordingly, it is hereby

ORDERED that the motion of Defendants FIRST LENOX TERRACE ASSOCIATES LLC. and HAMPTON MANAGEMENT CO. to dismiss the complaint herein is granted and the complaint is dismissed in its entirety, without prejudice, and with costs and disbursements to said defendants as taxed by the Clerk of the Court; and it is further


ORDERED that Plaintiff is directed to file an appropriate claim before the Division of Housing and Community Renewal (the "DHCR") within 30 days of this order to determine the issues stated in the instant complaint, and without prejudice to renew if the DHCR declines to address issues raised therein; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

The foregoing constitutes the decision and order of the Court.

<u>6/29/2018</u> DATE	 HONORABLE ROBERT D. KALISH J.S.C.	
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE