SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 35

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MARIANA DIMITROVA ALEKNA, BEATRIZ DA COSTA, SAMUEL I. GILCHRIST, RACHEL OLSON, JOSE SANTAMARIA, LAURA MAHLER, KELLY C. HOLLAND, MAX A. HOLLAND, MICHAEL G. TIVE, JOHN C. COLE, MARY ELLEN COLE, KRISTIN MANNONI, JOSEPH RICHARD DEBART, III, WILLIAM BLAIR DEBART, ALEX BERRICK, ASHAN SINGH, LAMAR SMALL, RACHEL L. PERKINS, SARA MUSE, KYUNG CHAN ZOH and JIHOE KOO,

Plaintiffs,

Index No.: 156847/16
DECISION/ORDER

-against-

201-217 WEST 110 PORTFOLIO OWNER LLC, 207 REALTY ASSOCIATES LLC, MANN REALTY ASSOCIATES and GFB MANAGEMENT LLC,

Defendants.

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

In this residential rent overcharge action, the plaintiff/tenants (tenants) move for leave to serve and file an amended complaint (motion sequence number 003). For the following reasons, this motion is granted.

BACKGROUND

Plaintiffs are tenants of a residential apartment building (the building) located at 207 Central Park North in the County, City and State of New York. *See* notice of motion, exhibit A (proposed amended complaint), ¶ 6. Co-defendants 201-217 West 110 Portfolio Owner LLC and GFB Management LLC are, respectively, the building's current owner and current managing

agent (together, the buyer defendants). *Id.*, ¶¶ 1-2. Co-defendants 207 Realty Associates LLC and Mann Realty Associates are, respectively, the building's former owner and managing agent (together, the seller defendants). *Id.*, ¶¶ 4-5. 201-217 West 110 Portfolio Owner LLC purchased the building from 207 Realty Associates LLC via a deed of sale dated April 20, 2016. *Id.*, ¶ 4.

Plaintiffs all occupy their apartments pursuant to unregulated "market rate" leases. *See* notice of motion, exhibit A (proposed amended complaint), ¶ 16. However, plaintiffs aver that they are actually entitled to the protection of the Rent Stabilization Law (RSL) because the building received "J-51" real estate tax abatement benefits through 2015, which had the effect of rendering their tenancies rent stabilized, by operation of law, during that period. *Id.*, ¶¶ 7-15.

As a result, plaintiffs commenced this action on August 8, 2016 by filing a summons and complaint that set forth causes of action for: 1) a declaratory judgment that the building's apartments are rent stabilized (against the buyer defendants); 2) a declaratory judgment that the deregulation of their apartments was invalid (against the buyer defendants); 3) injunctive relief (against the buyer defendants); 4) rent overcharges (against all defendants); 5) harassment (against all defendants); 6) breach of the implied covenant of good faith and fair dealing (against all defendants); 7) injunctive relief (against the seller defendants); and 8) attorney's fees (against all defendants). *See* Ansell affirmation in opposition, exhibit A (original complaint). The buyer defendants filed an answer on September 29, 2016 which set forth a cross claim against the seller defendants for contractual indemnification. On October 28, 2016 the seller defendants filed an answer with cross claims against the buyer defendants for: 1) breach of contract; 2) contractual indemnity; 3) implied contractual indemnity; 4) common-law indemnity; and 5)

contribution.

The parties then began the discovery process, however it was interrupted twice by motion practice (motion sequence numbers 001 & 002). Discovery is still incomplete and the Note of Issue has not yet been filed. Instead, On September 6, 2019, plaintiffs submitted the instant motion for leave to serve an amended complaint that would raise causes of action for: 1) violation of RSL § 26-512 (against all defendants); 2) violation of RSL § 26-512 (against all defendants); 3) a declaratory judgment (against all defendants); 4) mandatory injunctive relief (against the buyer defendants); 5) breach of the implied covenant of good faith and fair dealing (against the buyer defendants); and 6) attorney's fees (against all defendants). *See* notice of motion, exhibit A (proposed amended complaint). The buyer defendants have submitted opposition papers to plaintiffs' motion, but the seller defendants have not. Thus, the matter is now briefed and before the court (motion sequence number 003).

DISCUSSION

Pursuant to CPLR 3025 (b), "[a] party may amend his or her pleading . . . at any time by leave of court . . .," such "[l]eave shall be freely given upon such terms as may be just including the granting of costs and continuances," and "[a]ny motion to amend . . . pleadings shall be accompanied by the proposed amended . . . pleading clearly showing the changes or additions to be made to the pleading." "It is well established that leave to amend a pleading shall be freely granted absent prejudice or surprise resulting from the delay," unless "the proposed pleading fails to state a cause of action ... or is palpably insufficient as a matter of law." *Davis & Davis, P.C. v Morson*, 286 AD2d 584, 585 (1st Dept 2001)

Here, plaintiffs argue that the court should grant their motion because their proposed

amended complaint "includes new information learned since the action's commencement," because "there would be no conceivable prejudice or surprise" to defendants, and because "the proposed causes of action are meritorious." *See* plaintiffs' mem of law at 2-4. The buyer defendants raise three opposition arguments, which the court will dispose of in turn.

First, the buyer defendants argue that the motion should be denied "because the court should apply the law in effect at the time of filing in 2016." *See* defendants' mem of law at 4-6. The buyer defendants cite older precedent to support their assertion that the four-year statute of limitations which governed rent overcharge claims at that time (CPLR 213-a) should be applied. *Id.* However plaintiffs' reply papers note that the Appellate Division, First Department, ruled last month that all of the statutory amendments contained in the Housing Stability and Tenant Protection Act of 2019 - including the limitations period - must be applied retroactively. *See* plaintiffs' reply mem of law at 2-4. In *Dugan v London Terrace Gardens, L.P.* (177 AD3d 1 [1st Dept 2019]), the First Department specifically held as follows:

> "On June 14, 2019, New York State enacted the Housing Stability and Tenant Protection Act of 2019 (L 2019, ch 36) (HSTPA), landmark legislation making sweeping changes to the rent laws and adding greater protections for tenants throughout the State. Of relevance to this appeal is Part F of the HSTPA, which amended RSL § 26–516 and CPLR 213–a, which govern claims of rent overcharge and the statute of limitations for bringing such claims. The legislation directed that the statutory amendments contained in Part F 'shall take effect immediately and shall apply to any claims pending or filed on or after such date' (HSTPA, Part F, § 7). Because plaintiffs' overcharge claims were pending on the effective date of Part F of the HSTPA, the changes made therein are applicable here."
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> 177 AD3d at 3 (internal citations omitted).

The same factual scenario exists in this case. Plaintiffs initially raised their rent overcharge claims in their August 8, 2016 complaint, and those claims are still "pending"

because they have not been resolved as of the date of this decision. As a result, the new statute of limitations period mandated by the Housing Stability and Tenant Protection Act of 2019 governs those claims. Therefore, the court rejects the buyer defendants' argument to the contrary.

Next, the buyer defendants argue that "plaintiffs motion fails to make the required substantiation of merit." *See* defendants' mem of law at 6-7. Notably, the buyer defendants do not assert any legal arguments to challenge the merits of any of plaintiffs' proposed causes of action. Instead, they simply complain that plaintiffs "do not submit affidavit of a person with knowledge of the facts attesting to the merit or validity of" those proposed causes of action. *Id.* Plaintiffs reply that the law does not require them to submit such an affidavit in support of their proposed pleadings. *See* plaintiffs' reply mem at 4-5. Recent First Department case law makes it clear that plaintiffs are correct. *See e.g.*, *Boliak v Reilly*, 161 AD3d 625, 625 (1st Dept 2018) ("Plaintiffs were not required to submit an affidavit of merit or make any other evidentiary showing in support of their motion."); citing *Berkeley Research Group, LLC v FTI Consulting, Inc.*, 157 AD3d 486 (1st Dept 2018); *Hickey v Steven E. Kaufman, P.C.*, 156 AD3d 436 (1st Dept 2017). Further, the court's review of the proposed amended complaint indicates that plaintiffs' pleadings are - at least facially - sufficient to state all of the elements of their proposed causes of action. Therefore, the court rejects the buyer defendants' second opposition argument.

Finally, the buyer defendants argue that "amendment of the complaint will prejudice" GFB Management LLC. *See* defendants' mem of law at 8-9. They assert that this prejudice consists of the facts that: 1) they "have prepared for and participated in three mediation sessions, attended multiple days of depositions, and produced extensive discovery documents"; and 2) the

amended complaint "seeks treble damages based on a 'new' theory of liability." *Id.* Plaintiffs' reply papers characterize these assertions as "non sequiturs," and aver that filing their proposed amended complaint will not result in any prejudice to any of the defendants herein. *See* plaintiffs' reply mem at 5. The court agrees. The First Department has observed that:

> "'The kind of prejudice required to defeat an amendment ... must ... be a showing of prejudice traceable not simply to the new matter sought to be added, but also to the fact that it is only now being added. There must be some special right lost in the interim, some change of position or some significant trouble or expense that could have been avoided had the original pleading contained what the amended one wants to add.'"

Jacobson v Croman, 107 AD3d 644, 645 (1st Dept 2013); quoting *A. J. Pegno Constr. Corp. v City of New York*, 95 AD2d 655, 656 (1st Dept 1983) (internal citations omitted).

Here, the proposed amendments to plaintiffs' complaint were occasioned by the First Department's decision in *Dugan v London Terrace Gardens, L.P.*, which was issued on September 17, 2019. 177 AD3d 1, *supra*. Plaintiffs could not have known that the Housing Stability and Tenant Protection Act would be enacted, or that the *Dugan v London Terrace Gardens, L.P.* decision would have been issued, when they commenced this action in 2016. Thus, the "significant trouble or expense" that the buyer defendants complain of could *not* have been avoided, and the court does not consider that these intervening changes to the law caused any cognizable "prejudice" to the buyer defendants that would warrant the denial of plaintiffs' amendment request. Therefore, the court rejects the buyer defendants' final opposition argument. Accordingly, in view of the liberal policies that undergird requests pursuant to CPLR 3025 (b), the court grants plaintiffs' motion to amend.

CONCLUSION

Accordingly, for the foregoing reasons, it is hereby

ORDERED that the motion, pursuant to CPLR 3025 (b), of the plaintiff/tenants Mariana Dimitrova Alekna, Beatriz Da Costa, Samuel I. Gilchrist, Rachel Olson, Jose Santamaria, Laura Mahler, Kelly C. Holland, Max A. Holland, Michael G. Tive, John C. Cole, Mary Ellen Cole, Kristin Mannoni, Joseph Richard Debart, III, William Blair Debart, Alex Berrick, Ashan Singh, Lamar Small, Rachel L. Perkins, Sara Muse, Kyung Chan Zoh and Jihoe Koo (motion sequence number 003) is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that the defendants shall serve answers to the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that counsel for plaintiffs shall serve a copy of this decision, along with notice of entry, on all parties within 10 days of entry.

Dated: New York, New York

October 31, 2019

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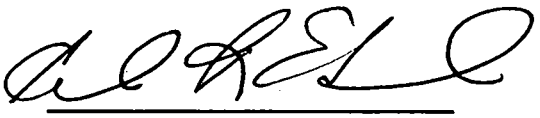

Hon. Carol R. Edmead, J.S.C.

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