SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 17

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LEE FOSTER,

Plaintiff,

-against-

CORONA PARK REALTY INC.; CORONA PARK REALTY ASSOCIATES LLC; EAST 89TH LLC; 151 EAST 26TH STREET ASSOCIATES LP; RR RE INVESTORS LLC; MNC HOLDINGS LLC; PNL RE HOLDINGS LLC; LB RETAIL LLC; FM EAST 6TH STREET LLC; WM RE INVESTORS LLC; 620 EAST ST. HOLDINGS, LLC; 620 MACCABI LLC; 620 KHOO FAMILY LLC; 620 26 JS LLC; 620-622 EAST 6TH BH LLC; AMS EAST 6TH LLC; MEHRARA 620-622 EAST 6TH STREET LLC; RAFII PARTNERS LLC; ADAM DANIELS; AARON DANIELS; and AD REAL ESTATE INVESTORS INC.,

Index No. 157325/2017

DECISION/ORDER

Defendants.

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HON. SHLOMO S. HAGLER, J.S.C.:

Motion sequence numbers 001 and 003 are consolidated for disposition. In motion sequence number 001, plaintiff Lee Foster ("Foster") moves for an order granting summary judgment and/or partial summary judgment as against defendants 620 East 6th Street Holdings LLC, 620 Maccabi LLC, 620 Khoo Family LLC, 620 26 JS LLC, 620-622 East 6th BH LLC, AMS East 6th LLC, Mehrara 620-622 East 6th Street LLC, Rafii Partners LLC, Adam Daniels, Aaron Daniels and AD Real Estate Investors Inc. (the "Current Owners"), and/or striking the defenses raised in the answer of those defendants.

In motion sequence number 003, Foster moves for an order granting partial summary judgment on the issue of liability and

dismissing the defenses and counterclaims of defendants Corona Park Realty Inc., Corona Park Realty Associates LLC, East 89th LLC, 151 East 26th Street Associates LP, RR RE Investors LLC, MNC Holdings LLC, PNL RE Holdings LLC, LB Retail LLC, FM East 6th Street LLC, and WM RE Investors LLC (the "Prior Owners").[1]

The following facts are alleged in Foster's verified complaint and his affidavit, sworn to on September 21, 2017. Foster initially became a tenant at 620 East 6th Street, New York, New York (the "Building"), apartment 3 (the "Apartment"), pursuant to a non rent-regulated lease for a term commencing May 1, 2008 and ending April 30, 2009, at a rent of $2,400 per month. Foster was offered and accepted renewal leases for the following amounts of rent per month:

May 1, 2009 - April 30, 2011 at $2,200 per month;

May 1, 2011 - April 30, 2013 at $2,400 per month;

May 1, 2013 - April 30, 2015 at $2,650 per month;

May 1, 2015 - April 30, 2017 at $2,800 per month.

In or about May 2017, Foster was offered a 15-month lease at $2,980 per month. As of September 21, 2017, the date of his

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[1] As was clarified during oral argument, two of the entities included among the Prior Owners, Corona Park Realty Inc. and Corona Park Realty Associates LLC, had ceased being owners of the building at issue in this litigation prior to the time Foster became a tenant. Plaintiff has, therefore, agreed to dismiss those two entities as defendants. The parties indicated they would settle an order to that effect. Tr of Oral Argument, January 4, 2019, at 23-24.

affidavit, Foster continued to reside in the Apartment, paying a rent of $2,980 per month.

Building History

According to records of the Division of Housing and Community Renewal ("DHCR"), the Apartment was occupied by Pedro Salgado ("Salgado") as a rent-stabilized apartment under a series of leases running from December 31, 1984 through December 31, 1998. Salgado's rent under his final lease was $359.13. *See* Grimble reply affirmation, exhibit J, ("Registration Apartment Information").

The next tenants, Dupre and Kaufman, had a lease for the term of August 1, 1998 - July 31, 1999, at a rent-stabilized rent of $1,650 per month.[2] Dupre and Kaufman were then given the following rent-stabilized renewal leases:

August 1, 1999-July 31, 2001 at $1,739.20 per month

August 1, 2001-July 31, 2003 at $1,843.55 per month. *Id.*

In 2003, the Apartment was listed with DHCR as high rent vacancy, with a vacancy lease for the term of April 1, 2003-April 30, 2004. The Apartment was listed as "exempt apartment, reg[istration] not required" for the registration years 2004-2015. *Id.*

According to counsel for the Current Owners, at some point

[2] The court notes that there appears to be a 6-month overlap in the dates between the last Salgado lease term and the lease of Dupre/Kaufman.

in 2017, after this lawsuit was commenced the Current Owners registered the Apartment with DHCR. *See* tr of Oral Argument at 45, lines 19-25; at 46, lines 1-18.

At the time of Foster's initial lease in 2008, the Building was owned by the Prior Owners. At that time, the Prior Owners were receiving J-51 tax benefits from the City of New York, which they received from the 2001/2002 fiscal year through the 2012/2013 fiscal year. None of Foster's leases contained a J-51 notice or rider indicating receipt of the J-51 benefits or that the Apartment was rent-stabilized as a result of the receipt of benefits.

At some time between May 1, 2013 and May 2015 the Building was sold by the Prior Owners to the Current Owners.

Motion Sequence Number 001

In motion sequence number 001, Foster seeks summary judgment or partial summary judgment against the Current Owners and/or to strike the defenses of those defendants. In addition, in his affidavit in support of his motion, Foster asks for a declaration that he is a rent-stabilized tenant. In oral argument, counsel for Foster indicated that in this motion he is seeking summary judgment regarding liability only and not seeking to have a specific amount of damages or specific rent ordered. *See* tr of oral argument at 6, lines 20-21. In the papers in support of his motion, however, in addition to seeking a declaratory judgment

that his Apartment is subject to rent stabilization, he appears to be seeking summary judgment with respect to his claim for rent overcharges, treble damages, and interest in the amount of $303,840.81 from the Current Owners (*see* LoGuidice affirmation, ¶ 28).

With respect to the legal status of the Apartment, Foster argues, and it appears that the Current Owners do not contest, that, due to the receipt of J-51 benefits by the Prior Owners, the Apartment should have been treated as a rent-stabilized apartment from the inception of his tenancy, notwithstanding its prior luxury destabilization.[3] *Roberts v Tishman Speyer Props., L.P.*, 13 NY3d 270 (2009). Where an Apartment is deemed rent-stabilized as a result of the receipt of J-51 tax benefits, but no notice or rider was provided to the tenant, the apartment remains rent-stabilized throughout the duration of the tenant's tenancy. *Matter of 73 Warren St., LLC v State of N.Y. Div. of Hous. & Community Renewal*, 96 AD3d 524, 527-28 (1st Dept 2012); Administrative Code of the City of New York ("Administrative Code") § 26-504; Real Property Tax Law ("RPTL") § 489 (7) (b) (2). For that reason, Foster is entitled to a declaration that the Apartment is rent-stabilized.

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[3] It is not clear from the papers submitted by the parties whether the Building was still receiving J-51 benefits at the time the Current Owners purchased the Building; however the Current Owners do not contest that the Apartment should now be treated as rent-stabilized.

With respect to the issue of rent overcharges, Foster argues that the owners (both Prior and Current) were not entitled to collect increased rent during his tenancy because of their failure to register the Apartment with DHCR after the Prior Owners began to receive J-51 benefits. *See* Rent Stabilization Code ("RSC") § 2528.4 ("The failure to properly and timely comply, on or after the base date, with the rent registration requirements of this Part shall, until such time as such registration is completed, bar an owner from applying for or collecting any rent in excess of: the base date rent, plus any lawful adjustments allowable prior to the failure to register").

Quoting *Jazilek v Abart Holdings, LLC* (72 AD3d 529, 531 [1st Dept 2010]), Foster argues that, because the owners did not file annual rent registration documents for the Apartment, no rent increases are permitted, and that his rent must be frozen at the last legal regulated rent. *Jazilek*, 72 AD3d at 531 ("A landlord's failure to file a 'proper and timely' annual rent registration statement results in the rent being frozen at the level of the 'legal regulated rent in effect on the date of the last preceding registration statement' [Rent Stabilization Law (Administrative Code of City of NY) § 26-517 [e]; see RSC § 2528.4 [a])".

Foster also contends that he is entitled to recover any rent overcharges for a period of four years prior to the filing of his

action (RSC § 2526.1 [a] [2]), as well as treble damages for a period of two years prior to the filing of the action. RSC § 2526.1 (a) (2) (i). While recognizing that he may only collect rent overcharges for a period of four years before the filing of his complaint (CPLR 213-a),[4] Foster argues that the landlord was engaged in a fraudulent scheme to deregulate the Apartment, and, therefore, the court may look back beyond four years in determining the base date for the for the calculation of rent overcharges. *See Matter of Grimm v State of N.Y. Div. of Hous. & Community Renewal Off. of Rent Admin.*, 15 NY3d 358 (2010). According to Foster, in determining the base date, the courts look to two factors: 1) whether there are substantial indicia of fraud; and 2) whether there is a reason that the rent history is unreliable. During oral argument, counsel for Foster cited *Nolte v Bridgestone Assoc. LLC* (167 AD3d 498 [1st Dept 2018]) for the proposition that failure to promptly register the Apartment as rent stabilized due to the receipt of J-51 benefits, constituted per se fraud. *See* tr of oral argument at 4. Foster additionally focuses on the Registration Apartment Information which indicates that from 1998 to 1999, after Salgado vacated the Apartment, the registered rent increased from $359.13 per month to $1,650 per

[4] The court notes that as amended by the Housing Stability and Tenant Protection Act, effective June 14, 2019, the four-year period for the awarding of rent overcharges under CPLR 213-a has been lengthened to 6 years.

month, with no explanation for the reason for the substantial increase. Relying on Department of Building records which do not show any construction done in the Apartment during the period in question, Foster argues that no Individual Apartment Improvements could have been done in the Apartment for which the landlord could have claimed an increase in rent. Foster contends that even assuming a vacancy increase of 20%, the rent could not have reached $1,650 per month.

Claiming that the 1999 rent of $1,650 was fraudulent, Foster contends that the 1998 rent of $359.13 should be considered the last registered regulated rent. Foster submits calculations based upon the $359.13 which result in a claim of $74,685.23 in base rent overcharges from September 2012 through August 2017, plus two years of treble damages and interest for a total of $303,840.81.[5] *See* LoGuidice affirmation, exhibit G.

Citing *Altman v 285 W. Fourth, LLC* (127 AD3d 654 [1st Dept 2015]), Foster further argues that, even assuming the 1999 increase to $1,650.00 was valid, it was improper to treat the Apartment as a high rent vacancy in 2003, following the termination of the 2001-2003 lease at the rent of $1,843.55. Foster contends that under *Altman*, the landlord may not claim a high rent vacancy unless the prior tenant's rent exceeded the

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[5] The court notes that the calculations appear to cover five, not four years.

high income threshold prior to the vacancy which, in 2003 was $2,000. Since the time that Foster's brief was submitted, however, the Appellate Division's decision was reversed by the Court of Appeals, which held that the 20% vacancy increase should have been considered in determining the rent at the time of vacancy, bringing the rent above the high income threshold. *Altman v 285 W. Fourth LLC*, 31 NY3d 178, 186 (2018). Thus, Foster's argument, that the deregulation of the Apartment in 2003 as a high rent vacancy following the rent of $1,843.55 was improper, fails.

Finally, Foster argues that treble damages should be awarded because rent overcharges are presumed willful unless and until a landlord establishes otherwise, and that the burden is on the landlord to establish a lack of willfulness. *Matter of Tockwotten Assoc. v New York State Div. of Hous. & Community Renewal*, 7 AD3d 453, 455 (1st Dept 2004).

The Current Owners contend that Foster has failed to make out a prima facie showing that he is entitled to summary judgment because although the complaint is verified by Foster, the bulk of the allegations in the complaint are either based on documents for which no authentication has been provided, were alleged upon information and belief, or are based upon hearsay. Furthermore, according to the Current Owners, Foster cannot cure those failings in his reply papers.

With respect to the question of rent overcharge, the Current Owners submit the affidavit of Aaron Daniels, one of the Current Owner defendants, who offers rent calculations based on the records of the Current Owners starting from 2003-2004 when the rent was $2,248.23. Daniels contends that those calculations show that, applying the applicable rent stabilization guidelines, Foster's rent has never exceeded the amounts permissible under rent stabilization from 2008 through 2017. Daniels aff, ¶¶ 7-19. The Current Owners additionally argue that, in any case, Foster cannot recover for any overcharge without submitting proof that payments have been made in full, which has not been submitted.

Finally, in oral argument, counsel for the Current Owners, states that they have now filed Registration Apartment Information documents with DHCR. *See* Oral Argument tr at 35. They argue that since the rent registration information has been properly filed, they are relieved of any penalty against them for having failed to file proper rent registration documents.

It is well settled that the movant on a summary judgment motion "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985). The motion must be supported by evidence in admissible form (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]), and by the pleadings

and other proof such as affidavits, depositions and written admissions (*see* CPLR 3212). The "facts must be viewed in the light most favorable to the non-moving party." *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 (2012) (internal quotation marks and citation omitted). Once the movant meets its burden, it is incumbent upon the non-moving party to establish the existence of material issues of fact. *Id.*, citing *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986). The "[f]ailure to make [a] prima facie showing [of entitlement to summary judgment] requires a denial of the motion, *regardless of the sufficiency of the opposing papers*." *Vega*, 18 NY3d at 503 (internal quotation marks and citation omitted, emphasis in original).

Though an attorney's affidavit which lacks personal knowledge is not probitive, it may be used in support of a motion for summary judgment to the extent that it is based upon documents in the attorney's possession which are relevant to the motion. *Zuckerman v City of New York*, 49 NY2d at 563 ("The affidavit or affirmation of an attorney, even if he has no personal knowledge of the facts, may, of course, serve as the vehicle for the submission of acceptable attachments which do provide 'evidentiary proof in admissible form', e.g., documents, transcripts"); *Comptroller of State of N.Y. v Gards Realty Corp.*, 68 AD2d 186, 188-189 (2d Dept 1979). Here, counsel for plaintiff has submitted government documents such as the Registration

Apartment Information and J-51 records which may be used to support a motion for summary judgment.

Prior to the decision of the Court of Appeals in *Roberts v Tishman Speyer Props., L.P.* (13 NY3d 270), failure to treat apartments as rent stabilized while receiving J-51 benefits was not considered fraudulent conduct. After the decision in *Gersten v 56 7th Ave. LLC* (88 AD3d 189 [1st Dept 2011]), applying *Roberts* retroactively, however, such failure has been treated as fraudulent conduct. *See Nolte v Bridgestone Assoc. LLC,* 167 AD3d at 498 (affirming the Supreme Court finding that defendant "was engaged in a fraudulent scheme to deregulate apartments" when it failed to promptly register the apartment in question and 30 others in the building when the applicability of *Roberts* was clear).

Foster is correct that "[a]n owner's failure to file a 'proper and timely' annual rent registration statement bars the owner from 'collecting any rent in excess of the legal regulated rent in effect on the date of the last preceding registration statement' until such time as a proper registration is filed." *Bradbury v 342 W. 30th St. Corp.*, 84 AD3d 681, 683-684 (1st Dept 2011), quoting Administrative Code § 26-517 [e]; *see also* 9 NYCRR 2528.4 [a]. Therefore, the rent should have been frozen until that filing. As discussed further below in relation to the question of rent overcharges, however, the question of the amount

at which the rent should have been frozen remains to be resolved.

Foster claims that he is entitled to overcharges starting four years prior to the filing of his lawsuit. He further claims that because the Prior Owners engaged in fraudulent conduct the overcharges should be based upon the last registered rent. In addition to arguing that the owners' failure to register the Apartment upon receipt of J-51 benefits constituted fraud, Foster contends that the unexplained increase in rent from $359.13 to $1,650 in 1999 was part of the fraudulent scheme to deregulate the Apartment tainting the 2000 rent of $1,843.55 per month. Therefore, according to Foster, the 1998 rent of $359.13 per month, rather than the last rent-stabilized rent of $1,843.55, must be used as the base rent.

But Foster's assertion that fraud must have been involved in the 1998 rent increase is based solely on speculation concerning the basis for the sharp increase in rent following Salgado's final lease in 1998. *See Breen v 330 E. 50th Partners, L.P.*, 154 AD3d 583, 584 (1st Dept 2017)("Neither the sizeable increase in the apartment rent between 1990 and 1991, based in part on apartment improvements, nor plaintiff's mere skepticism about the quality or extent of those improvements, were sufficient to establish a colorable claim of fraud"); *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 164 AD3d 420, 423 (1st Dept 2018)("An increase in rent, standing

alone, does not establish a fraudulent scheme to evade rent stabilization. ... [Tenants'] vague assertions provide no basis for disturbing DHCR's finding that there was no evidence of fraud by landlord"); (*compare Nolte v Bridgestone Assoc. LLC,* 2018 NY Slip Op 31869(U)(Sup Ct, NY County), *affd* 167 AD3d 498 (Plaintiff presented evidence including affidavit of contractor, unrefuted by defendant, that the jump in rent was not justified based on individual apartment improvements).

Thus, Foster has failed to make a prima facie showing that fraud was involved in the 1998 rent increase which would justify utilizing $359.13 as a base rent, and that he is entitled to summary judgment on his claim for rent overcharges and treble damages. Partial summary judgment on that claim, therefore, is denied. This does not mean that, after discovery, Foster may not be able to establish at trial that the 1999 increase resulted from fraud. Moreover, just as, at this point, Foster has not established that fraud occurred, the Current Owners have, likewise, not established that fraud did not occur. *See Taylor v 72A Realty Assoc., L.P.* 151 AD3d 95, 105 (1st Dept 2017)(Even where there was no evidence of fraud by the owner in setting plaintiffs' initial rent, owner's motion for summary judgment was properly denied and it was still required to prove what the legally regulated rent was on the base date.)

Foster also moves to strike the following affirmative

defenses of the Current Owners: 1) all or part of the complaint is barred by the appropriate statute of limitations; 2) plaintiff has suffered no damages with respect to his security deposit; and 3) defendants' actions were taken, in whole or in part, on behalf of a disclosed principal.

"A party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit." CPLR 3211 (b). "However, where affirmative defenses merely plead conclusions of law without any supporting facts, the affirmative defenses should be dismissed pursuant to CPLR 3211 (b)." *Bank of Am., N.A. v 414 Midland Ave. Assoc., LLC,* 78 AD3d 746, 750 (2d Dept 2010)(internal quotation marks and citation omitted).

With respect to the affirmative defense of statute of limitations, it appears that both plaintiff and the Current Owners agree that a four-year statute of limitations applies to the recovery of rent overcharges. The affirmation of counsel for the Current Owners, however, notes that the spreadsheet submitted by plaintiff in support of his claim of rent overcharges covers five years, rather than four, as noted by the court above. Plaintiff's motion to strike the first affirmative defense, therefore, is denied.

The court notes, however, that the four-year statute of limitations for rent overcharges has been extended to six years

pursuant to L.2019, c. 36, pt. F, § 6, eff. June 14, 2019, CPLR 213-a. Plaintiff's motion for summary judgment with respect to rent overcharges has been denied by the court.

With respect to the second affirmative defense, the Current Owners contend that plaintiff has failed to offer proof that he ever made a security deposit; therefore he has no claim for conversion. Plaintiff contends that commingling of a security deposit is actionable pursuant to General Obligations Law § 7-103. At this point, however, plaintiff has not offered proof of his payment of a security deposit, but has merely asserted that he has not been advised of the location of the security deposit nor been paid interest on the deposit. Plaintiff's motion to strike the second affirmative defense, therefore, is denied.

With respect to the third affirmative defense, that defendants' actions were taken on behalf of a disclosed principal, it is not clear on behalf of which specific defendants the Current Owners seek to assert this affirmative defense. Foster is entitled to that information. The Current Owners are, therefore, directed to clarify the third affirmative defense to that extent, and otherwise, Foster's motion is denied.

Motion Sequence Number 003

In motion sequence number 003, Foster moves for an order granting partial summary judgment on the issue of liability as against the Prior Owners and dismissing their defenses and

counterclaims.

With respect to the issue of the regulatory status of the Apartment, like the Current Owners, the Prior Owners concede that Foster's tenancy is that of a rent-stabilized tenant. Foster is, therefore, entitled to a declaratory judgment to that effect.

As noted above, although counsel for Foster did indicate during oral argument that at this time he is seeking summary judgment on liability only, in Motion Sequence Number 003 he has incorporated his papers from Motion Sequence Number 001 by reference, and again argues that he is entitled to rent overcharges, treble damages and interest in the total amount of $303,840.81. Once again, in his papers he argues that because the owners failed to provide a J-51 rent stabilization rider with his lease and failed to register the Apartment with DHCR when it became rent stabilized as a result of the receipt of J-51 tax benefits, that the owners were precluded from collecting "any rent in excess of the legal regulated rent in effect on the date of the last preceding registration statement." Rent Stabilization Law § 26-517 (e)(Administrative Code § 26-517 [3]); *see also* 9 NYCRR 2528.4 [a]). Quoting *Bradbury v 342 W. 30th St. Corp.*, 84 AD3d 681, 684 (1st Dept 2011), Foster argues that "[w]here an owner fails to file a 'proper and timely' registration, until such registration is filed, the rent is frozen at the legal regulated rent listed in the preceding

registration statement."

Once again Foster contends that the increase in rent from 1998 to 1999 from $359.13 to $1,650.00 indicates fraud and, therefore, $359.13 should be considered the base rent for calculating overcharges and treble damages, which he contends total $303,840.81.

As the court noted in its discussion of Motion Sequence Number 001 above, the heart of the remaining dispute turns on the proper base rent to use in calculating the rent overcharges, if any. Foster continues to assert that the 1988 rent of $359.13 is the proper amount. The Prior Owners appear to agree that given the improper (or according to them, mistaken) deregulation of the Apartment while they were receiving J-51 benefits, it is proper to look back to the last registered rent to establish the rent and determine whether there have been rent overcharges. They disagree, however, as to what should be considered the last registered rent. Citing *Taylor v 72A Realty Assocs., L.P.* (151 AD3d 95), and contending that Foster has not established any fraud that would justify utilizing the 1998 rent of $359.13 as the proper base rent, the Prior Owners contend that the look-back to determine the base rent is to the April 1, 2002 rent of $1,843.55. Utilizing that number as the base rent and calculating the increases permissible under the Rent Stabilization Law based upon that rent, they argue that there

have been no rent overcharges. *See* Golino affirmation, ¶¶ 17-24 for calculations.

The Prior Owners further argue that merely the failure to register the Apartment as rent-stabilized or provide a J-51 rider during the period they received J-51 benefits does not alone warrant a finding of rent overcharge or justify a rent freeze. They specifically rely on section 26-517 (e) of the Rent Stabilization Law which states:

> "The filing of a late registration shall result in the prospective elimination of such sanctions and provided that increases in the legal regulated rent were lawful except for the failure to file a timely registration, the owner, upon the service and filing of a late registration, shall not be found to have collected an overcharge at any time prior to the filing of the late registration."

Administrative Code § 26-517 (e).

The Prior Owners argue that the Rent Stabilization Code provides for a penalty for failing to register the Apartment "unless the owner can establish that the rent collected was otherwise legal." Rent Stabilization Code § 2522.5 (c) (3). According to the Prior Owners, utilizing the $1,843.55 rent as the base rent, they have shown that Foster has never paid rent overcharges. Therefore, they contend that there is no basis for penalizing the landlord other than the failure to register the Apartment with DHCR and provide a J-51 rider.

The court has concluded in Motion Sequence Number 001 that Foster has failed to establish, for the purposes of summary

judgment, that the 1998 rent increase was fraudulent. His motion for partial summary judgment for liability for rent overcharges, therefore, was denied against the Current Owners. For the same reason, it is denied against Prior Owners. That does not mean, however, that the $1,843.55 is the proper base rent as the Prior Owners contend. In *Taylor v 72A Realty Assocs., L.P.*, which is relied upon by the Prior Owners, while ruling that the owner had improperly deregulated the apartment in question, the Court also ruled that, based on the evidence submitted by the owner regarding apartment improvements, that the rent increases, prior to the plaintiffs took occupancy of the apartment, were legally permissible. Here, although the court has concluded that Foster failed to establish entitlement to summary judgment, the 1998 unexplained increase in rent from $359.13 to $1,650.00 raises serious questions concerning whether fraud was involved in that sharp increase, which, if proved at trial, could justify utilizing the $359.13 rent as the proper look-back base rent.

Foster also seeks an order dismissing all of the Prior Owners' following affirmative defenses: 1) the complaint is barred in whole or in part by the applicable statute of limitations; 2) the complaint fails to state a cause of action; 3) some or all of the complaint is barred by the doctrine of laches; 4) the complaint is barred in whole or in part by

documentary evidence;[6] 4) based upon the documents submitted by plaintiff and the applicable rent stabilization guidelines, there were no rent overcharges; 5) pursuant to the decision in *Taylor v 72A Realty Assocs., L.P.* (151 AD3d 95) and the Rent Stabilization Law and RSC there is no rent overcharge; and 7) a reservation of rights to assert additional defenses, affirmative defenses and counterclaims that may become available. Foster also seeks to dismiss the Prior Owners' counterclaim for attorneys' fees.

The Prior Owners do not directly address Foster's motion to have their affirmative defenses and counterclaim dismissed. The First, Third and Seventh affirmative defenses are boiler plate with no supporting allegations and they are dismissed. With respect to the Second Affirmative Defense of failure to state a cause of action, since the Apartment was improperly removed from rent stabilization and Foster is entitled to a declaratory judgment that the Apartment continues to be rent-stabilized during his tenancy, the Second Affirmative Defense is dismissed. The substance of the first- and second-Fourth Affirmative Defenses and the Fifth Affirmative Defense regarding whether

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[6] The answer of the Prior Owners contains two affirmative defenses which are titled "Fourth Affirmative Defense." Because they both refer to documentary evidence submitted by plaintiff, the court concludes that they were intended to be read together considered a single affirmative defense, however, the court will refer to them as the first-Fourth Affirmative Defense and the second-Fourth Affirmative Defense. In addition, the answer contains no Sixth Affirmative Defense.

there have been rent overcharges are addressed in the body of defendants' opposition papers, and those affirmative defenses are not dismissed.

With respect to Foster's motion to dismiss the Prior Owners' counterclaim for attorneys' fees, that branch of the motion is denied as premature.

Conclusion

Accordingly, it is hereby

ORDERED in Motion Sequence Number 001 that the branch of plaintiff's motion, that seeks a declaration that Apartment 3 is a rent-stabilized apartment and that he is a rent stabilized tenant is granted; and it is further

ADJUDGED AND DECLARED that Apartment 3 in the building located at 620 East 6th Street, New York, New York is a rent-stabilized apartment, and plaintiff Lee Foster is the rent-stabilized tenant of Apartment 3 for the duration of his tenancy; and it is further

ORDERED in Motion Sequence Number 001 that the branch of plaintiff's motion for summary judgment or partial summary judgment as to liability for rent overcharges, treble damages and interest is denied; and it is further

ORDERED in Motion Sequence Number 001 that the branch of plaintiff's motion to dismiss the defenses and counterclaim of defendants 620 East 6th Street Holdings LLC, 620 Maccabi LLC, 620

Khoo Family LLC, 620 26 JS LLC, 620-622 East 6th BH LLC, AMS East 6th LLC, Mehrara 620-622 East 6th Street LLC, Rafii Partners LLC, Adam Daniels, Aaron Daniels and AD Real Estate Investors Inc. is granted to the extent that defendants are directed to amplify their third affirmative defense as set forth in the opinion above and the motion is otherwise denied; and it is further

ORDERED in Motion Sequence Number 003 that the branch of plaintiff's motion for summary judgment as to liability for rent overcharges, treble damages and interest is denied; and it is further

ORDERED in Motion Sequence Number 003 that the branch of plaintiff's motion to dismiss the affirmative defenses of defendants East 89th LLC, 151 East 26th Street Associates LP, RR RE Investors LLC, MNC Holdings LLC, PNL RE Holdings LLC, LB Retail LLC, FM East 6th Street LLC, and WM RE Investors LLC is granted with respect to the first, second, third and the seventh affirmative defenses and is otherwise denied.

Dated: October 30, 2019

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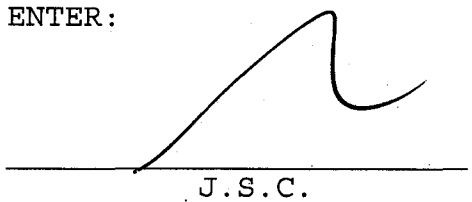

J.S.C.