Fried v Galindo
2019 NY Slip Op 34272(U)
July 31, 2019
Civil Court, Kings County
Docket Number: L&T Index No. 66334/18
Judge: David A. Harris
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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: PART J

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JOEL FRIED,

L&T Index No 66334/18
Mot. Seq. No. 4

Petitioner,

DECISION AND ORDER

-against-

CARMEN GALINDO,

Respondent-tenant

JOHN DOE and JANE DOE

Respondents-undertenants.

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HONORABLE DAVID A. HARRIS, J.H.C.:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of respondent's motion for dismissal

Papers	Numbered
Notice of motion & Affidavits Annexed	1
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	2
Replying Affidavits	
Exhibits	
Reply memorandum	3

Upon the foregoing cited papers, the Decision and Order on this Motion is as follows:

After the service of a Notice of Intent Not To Renew and Termination of Tenancy expiring on April 30, 2018 (Golub Notice), petitioner commenced this summary proceeding to recover possession of Apartment 3L (Apartment) in the building located at 374 Wallabout

Street, in Brooklyn (Building). The Golub Notice alleged that petitioner sought to recover all apartments in the Building to convert it into a single family home to be occupied as petitioner's primary residence. Respondent interposed a written answer alleging a variety of defenses. The matter first appeared on the calendar on May 16, 2018 and was adjourned repeatedly. Motion practice ensued, and disclosure commenced and continued. During the pendency of this proceeding, a fire occurred in the Building, resulting in the issuance by the Department of Housing Preservation and Development of an Order to Repair/Vacate Order, effective September 23, 2018.

Respondent now moves pursuant to CPLR 3211(a)(7) for dismissal or, alternatively for summary judgment pursuant to CPLR 3212. The genesis of respondent's motion is the enactment, on June 14, 2019 of the Housing Stability and Tenant Protection Act of 2019 (HSTPA), augmenting, amending, repealing and enacting provisions of a wide range of laws salient to rent regulation and landlord-tenant relations throughout the State of New York. Of particular pertinence here are two provisions. The first amends the Rent Stabilization Law to provide that no rent stabilization code can be enacted unless it provides that no owner may refuse to renew a lease except:

> "where he or she seeks to recover possession of one dwelling unit because of immediate and compelling necessity for his or her own personal use and occupancy as his or her primary residence or for the use and occupancy of a member of his or her immediate family as his or her primary residence, provided however, that this subparagraph shall permit recovery of only one dwelling unit"

(Administrative Code of City of NY §26-511[c][9][b] as amended by HSTPA 2019 Sess. Law

News of N.Y. Ch. 36, pt. I, §2 [S. 6458[[McKinney's]). The second provides that "[t]his act shall take effect immediately and shall apply to any tenant in possession at or after the time it takes effect, regardless of whether the landlord's application for an order, refusal to renew a lease, or refusal to extend or renew a tenancy took place before this act shall have taken effect." (HSTPA, 2019 Sess. Law News of N.Y. Ch. 36, pt. I §5 [S. 658] [McKinney's]). Prior to passage of these amendments, the section permitted the refusal to renew a lease:

> "where he or she seeks to recover possession of one or more dwelling units for his or her own personal use and occupancy as his or her primary residence in the city of New York and/or for the use and occupancy of a member of his or her immediate family as his or her primary residence in the city of New York"

(former Administrative Code of City of NY §26-511[c][9][b]). Respondent argues that the enactment of this statute, and the provisions calling for it to take effect immediately and apply to any tenant in possession on its effective date, require the dismissal of this proceeding, as the Golub Notice states explicitly that petitioner seeks to recover all apartments in order to convert the Building into a single family home.

In opposition, petitioner asserts that the administrative code amendment is inapplicable to this proceeding because, petitioner asserts, it "is speaking directly to the processing of applications and notices to terminate a tenant's lease for personal use, not applications and notices to terminate a tenant's lease *that have been contested and already brought as proceedings in court*," (affirmation in opposition at pgh. 14). Petitioner urges that when, as here, a case is already pending, the statute as it existed at commencement of the proceeding

remains in effect, and that the amendment "is therefore prospective in nature, with the exception of its retroactive applicability to applications to terminate leases, and refusals to extend or renew tenancies." Petitioner further relies on what petitioner characterizes as "paragraph 29 of the Act" (Affirmation in opposition at pgh. 18), which provides that:

> "This act shall take effect immediately and shall apply to actions and proceedings commenced on or after such effective date; provided, however, that sections three, six and seven shall take effect on the one hundred twentieth day after this act shall have become a law; provided, further, that section twenty-five of this act shall take effect on the thirtieth day after this act shall have become a law and shall apply to any lease or rental agreement or renewal of a lease or rental agreement entered into on or after such date; and, provided, further, section five of this act shall take effect on the thirtieth day after this act shall have become a law."

HSTPA, 2019 Sess. Law News of N.Y. Ch. 36, pt. N, §29 [S. 6458] [McKinney's]).

Initially, the court notes that summary judgment must be denied. There is a fundamental requirement that any "motion for summary judgment shall be supported by affidavit," (Civil Practice Law and Rules Rule 3212). The instant motion is supported only by the affirmation of counsel.

The relevant standard for determining a motion pursuant to CPLR 3211 has been set forth with clarity. It has been held that:

> "[o]n a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction (see, CPLR 3026). We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Morone v. Morone*, 50 N.Y.2d 481, 484, 429 N.Y.S.2d 592, 413 N.E.2d 1154; *Rovello v. Orofino Realty Co.*, 40 N.Y.2d 633, 634, 389 N.Y.S.2d 314, 357 N.E.2d 970). Under CPLR 3211(a)(1), a dismissal

> is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law (see, e.g., *Heaney v. Purdy*, 29 N.Y.2d 157, 324 N.Y.S.2d 47, 272 N.E.2d 550)."

(*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]).

Here, it is undisputed that there has been a change in law. Petitioner, however, misconstrues both the effect and the application of those changes. The HSTPA explicitly provides that:

> "This act enacts into law major components of legislation relating to rent regulation and tenant protection. Each component is wholly contained within a Part identified as Parts A through O. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found."

(HSTPA, 2019 Sess. Law News of N.Y. Ch. 36, §1 (S. 6458) [McKinney's]). The relevant amendment of Section 26-511 of the Administrative Code is set forth in Part I of the HSTPA. That part contains five sections. Part M of the HSTPA is designated as the Statewide Housing Security and Tenant Protection Act of 2019 (HSTPA, 2019 Sess. Law News of N.Y. Ch. 36, pt. M, §1 [S. 6458] [McKinney's]). Petitioner's reliance on Section 29 of Statewide Housing Security and Tenant Protection Act of 2019 is misplaced, as that section is without application to the applicability of the relevant section of the HSTPA, and petitioner's assertion that it requires

prospective application of the amendment to section 26-511 of the Administrative Code is baseless.

Petitioner further asserts that the mandate that "[t]his act shall take effect immediately and shall apply to any tenant in possession at or after the time it takes effect, regardless of whether the landlord's application for an order, refusal to renew a lease, or refusal to extend or renew a tenancy took place before this act shall have taken effect" (HSTPA, 2019 Sess. Law News of N.Y. Ch. 36, pt. I §5 [S. 658] [McKinney's]) is without application to this proceeding because it only is intended to apply to contested claims over which proceedings have been commenced and is to be applied prospectively. In support of this contention, petitioner relies on *Duell v Condon*, (84 NY2d 773 [1995]). That reliance is misplaced. In *Duell*, the court held that:

> Whether a statute is to be applied prospectively or retroactively generally requires determination of legislative intent (*see, Longines–Wittnauer Watch Co. v. Barnes & Reinecke*, 15 N.Y.2d 443, 453, 261 N.Y.S.2d 8, 209 N.E.2d 68; McKinney's Cons.Laws of N.Y., Book 1, Statutes § 51[b], [d]). When a statute creates a new right of action, it is presumed that the Legislature intended the statute to be applied prospectively only unless a contrary intent clearly appears (*see, Jacobus v. Colgate*, 217 N.Y. 235, 240–242, 111 N.E. 837). On the other hand, statutes that are remedial in nature may be applied retrospectively (*see, Becker v. Huss Co.*, 43 N.Y.2d 527, 540, 402 N.Y.S.2d 980, 373 N.E.2d 1205). Though these maxims of statutory construction provide helpful guideposts, the reach of the statute ultimately becomes a matter of judgment made upon review of the legislative goal (*see, Becker v. Huss Co.*, 43 N.Y.2d at 540–541, 402 N.Y.S.2d 980, 373 N.E.2d 1205, *supra*).
> *Duell v Condon*, 84 NY2d 773, 783 [1995]

(Duell v Condon, 84 NY2d 773, 783 [1995]). As petitioner, notes, section 29 of the Statewide Housing Security and Tenant Protection Act of 2019 specifies the effective date of that act and includes specified exceptions. Part I of the HSTPA similarly includes a provision governing both its effective date and the breadth of its applicability, and specifically mandates the immediate effect of its provisions and their applicability to any tenant in possession at or after the time it takes effect, and applies to such tenants whether or not the landlord's actions had occurred before or after its enactment. The Rent Stabilization Law is remedial nature, and subject to broad interpretation to effectuate its purposes (*Federal Home Loan Mortg. Corp. v New York State Division of Housing and Community Renewal*, 87 NY2d 325, 332 [1995]). The plain language of the statute explicitly addresses its applicability to all tenants in possession at the time of its enactment, without regard to when petitioner's refusal to renew the lease occurred. The exception that petitioner seeks to carve out, for those claims that are contested and for which proceedings have been commenced, lacks any basis in the plain language of the statute. When, as in this case, "the language of the statute is clear and unambiguous, and there is no reason to judicially engraft anything upon the ordinary meaning of the words employed therein," (*People v Excell*, 254 AD2d 369, 369 [2d Dept 1998]).

Although the Rent Stabilization Code has not yet been amended to implement changes required by Section 26-511 of the Rent Stabilization Law, the provisions of the code that permit "one of the individual owners of any building ... to recover possession of one or more dwelling units" (9 NYCRR 2524.4[a][3]), that provision is unequivocally inconsistent and therefore unenforceable.

The Golub Notice states plainly that petitioner's purpose is to recover all apartments in the building for purposes of its conversion into a private home. Amendment of the Rent Stabilization Law now precludes recovery of possession for the purposes set forth in the Golub Notice. The petition therefore fails to state a cause of action. Accordingly, respondent's motion is granted, and this proceeding is dismissed. This is the decision and order of the court.

Dated: Brooklyn, New York
July 31, 2019

DAVID A. HARRIS, J.H.C.