Woodson v Convent 1 LLC
2020 NY Slip Op 30061(U)
January 6, 2020
Supreme Court, New York County
Docket Number: 160547/2017
Judge: Alexander M. Tisch
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ALEXANDER M. TISCH **PART** IAS MOTION 18EFM

Justice

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HEATH WOODSON, DANIEL LARKIN

Plaintiffs,

- v -

CONVENT 1 LLC,CHESTNUT HOLDINGS OF NEW YORK, INC.,

Defendants.

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INDEX NO. 160547/2017

MOTION DATE 09/11/2019

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 178, 232

were read on this motion to/for ORDER MAINTAIN CLASS ACTION

Upon the foregoing papers, plaintiffs move for an order certifying a class and subclass pursuant to CPLR 901, *et seq*. Defendants oppose the motion and cross-move for an order dismissing plaintiff's complaint pursuant to CPLR 3211 (a)(2). For the reasons set forth below, plaintiffs' motion for class certification is granted.

Plaintiffs, current and former tenants of an apartment building located at 310 Convent Avenue in the County, City, and State of New York (the building), seek damages for rent overcharges and rent-stabilized leases in the correct amount for current tenants. Plaintiffs allege that their apartments were improperly removed from the protection of the Rent Stabilization Law (RSL) despite their landlord receiving benefits under New York City's J-51 tax abatement program.

Plaintiffs now seek an order: (i) certifying this action as a class action pursuant to CPLR Article 9; (ii) appointing plaintiffs as lead plaintiffs and class representatives; (iii) appointing the law

firm of Newman Ferrara LLP as counsel for the class; and (iv) granting plaintiffs such other and further relief as this Court deems just and proper. Plaintiffs seek certification for a class defined as:

> "All tenants at 310 Convent living, or who had lived, in apartments that were deregulated during the period when J-51 benefits were being received by owner of 310 Convent, except that the class shall not include any tenants who vacated such apartment prior to November 29, [2011]" (NYSCEF Doc. No. 129).[1]

Plaintiffs also seek a sub-class compromised of current tenants at the building seeking injunctive relief in the form of rent-stabilized leases with correct, legal regulated rents.

CPLR 901 and 902 set forth the prerequisites for a class action. CPLR 901 (a) provides that a class action may be maintained where:

"1. the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;
2. there are questions of law or fact common to the class which predominate over any questions affectimg only individual members;
3. the claim or defenses of the representative parties are typical of the claims or defenses of the class;
4. the representative parties will fairly and adequately protect the interests of the class; and
5. a class action is superior to other available methods for the fair and efficient adjudication of the controversy."

Plaintiffs bear the burden of establishing that the criteria in CPLR 901 (a) have been met (*Kudinov v Kel-Tech Constr. Inc.*, 65 AD3d 481 [1st Dept 2009]). Once the criteria are met, "the court, in deciding whether to grant class action certification should then consider the additional factors promulgated by CPLR 902 such as the interest of individual class members in maintaining separate actions and the feasibility thereof; the existence of pending litigation regarding the same controversy; the desirability of the proposed class forum; and the difficulties likely to be encountered in managing the class action" (*Pludeman v N. Leasing Sys., Inc.*, 74 AD3d 420, 422 [1st Dept 2010]).

[1] In light of the recent enactment of the Housing Stability and Tenant Protection Act of 2019 (HSTPA), plaintiffs requested via a letter dated June 28, 2019, that the Court amend the class definition (NYSCEF Doc. No. 229). As the HSTPA extends the statute of limitations from four years to six years, the class period should commence on November 29, 2011. At oral argument, defense counsel conceded that the amendment would be proper.

CPLR 901 and 902 are to be liberally construed (*Englade v HarperCollins Publs., Inc.*, 289 AD2d 159 [1st Dept 2001]) and the determination of whether a class should be certified rests within the discretion of the court (*Kudinov*, 65 AD3d 481).

Plaintiffs submit sworn affidavits wherein they state that they both live in apartments located in the building. Each state that they were provided with a market-rate lease as well as market-rate lease renewals. In 2018, plaintiff Heath Woodson (Woodson) signed a lease renewal that was purportedly a rent-stabilized lease; the renewal listed his legal regulated rent as $2,202.19. That renewal included a preferential rent rider requiring him to pay $2,202.00.

In March 2017, plaintiff Daniel Larkin (Larkin) signed a renewal lease which was purportedly a non-rent-stabilized lease and listed his rent as $2,701.50. Attached to the lease was a concession rent rider lowering his rent to $2,475.00. Larkin alleges that one week after the complaint was filed, he received a rent-stabilized lease renewal which stated that his legal regulated rent was $2,746.27 for a one-year lease, and $2,755.53 for a two-year lease. The concession rent rider provided roughly a $10.00 concession for the one-year lease, and a $35.00 concession on a two-year lease.

Plaintiffs contend that the numerosity prong is met because it is likely that there are at least forty putative members of the proposed class based on the recent extension of the statute of limitations period, the number of units affected, and that more than one tenant likely occupies, or occupied, some units. Even if there are fewer than forty, plaintiffs direct the Court to *Borden v 400 E. 55th St. Assoc., L.P.*, which states that "the legislature contemplated classes involving as few as 18 members...where the members would have difficulty communicating with each other...[s]uch reasoning would apply to the cases here, where tenants have moved out of the building" (24 NY3d 382, 399 [2014]).

In opposition, defendants argue that the number of prospective members is less than what plaintiffs contend. Based upon a period going back to November 2013, defendants maintain that there are at most twenty-two members. The Court disagrees. Defendants' argument rests upon a definition of the class that differs from what plaintiffs seek. Defendants define the applicable period as being when the apartments were deregulated, i.e. until 2016 when they were re-regulated. However, as proposed by plaintiffs, the class defines the applicable period as the time that defendants were receiving J-51 benefits. The defect in defendants' argument is that it presupposes that when the apartments were re-regulated in 2016, they were done so in a lawful manner. Whether the apartments were charged the correct legal rent amount when re-regulated is still a live controversy. Similarly, the Court rejects defendants' argument that the class is overbroad and invalid. CPLR 901 (a) is to be construed liberally, and therefore, the Court finds that the numerosity element has been established.

Next, plaintiffs contend that the common predominate question is whether the default formula, contained in the Rent Stabilization Code (RSC) § 2522.6 (b)(3), is applicable to the case at bar. Pursuant to RSC § 2522.6 (b)(2) the formula applies where the full rental history is inapplicable, or defendants have engaged in a fraudulent scheme. Defendants maintain that neither scenario is present in these circumstances and therefore the formula does not apply. However, the task before the Court is not to answer that question, but rather determine if that question is central and predominate. The argument that the amount of damages may vary from individual to individual is not dispositive (*see Borden*, 24 NY3d 382). Here, plaintiffs have demonstrated that there are common predominate questions of law and fact.

With respect to typicality, defendants argue that plaintiffs' claims are not representative of the claims of the persons in the proposed class definition because they do not in fact have any claims against defendants. Therefore, the claims are not typical of the class, and plaintiffs could not

adequality represent the interest of the class. As discussed *supra*, this argument once again relies on the assertion that the apartments were re-regulated in a lawful manner. The Court agrees with plaintiffs that at the class certification stage, such an inquiry is entirely inappropriate. Plaintiffs allege that the same conduct by defendants has injured them and putative class members, thereby satisfying the typicality element (*see Super Glue Corp. v Avis Rent A Car Sys.*, 132 AD2d 604 [2d Dept 1987]).

The Court is also unpersuaded by defendants' argument that plaintiffs must further demonstrate their understanding of the nature and status of the action. Plaintiffs' affidavits sufficiently demonstrate that they will fairly and adequately protect the interests of the class (*see Borden*, 24 NY3d 382; *see also Borden v 400 East 55th St. Assoc., L.P.*, 105 AD3d 630 [1st Dept 2013]). Plaintiffs' submissions further demonstrate that their attorneys are sufficiently experienced in both landlord-tenant and class-action litigation.

Finally, the Court of Appeals has recognized that "to preserve judicial resources, class certification is superior to having these claims adjudicated individually" (*Borden*, 24 NY3d at 400). Filing separate actions for each tenant and former tenant would run the risk of inconsistent rulings and waste judicial resources. As such, the Court finds that plaintiffs have met requirements set forth in CPLR 901 (a)(5). Additionally, the Court has considered the factors set forth in CPLR 902 and finds that class certification is appropriate. It is undisputed that there is no other pending litigation commenced by or against members of the class. The forum is appropriate because all members are current or former New York County residents, and their claims arose out of their occupancy of a building in New York County with the same landlord.

With respect to defendants' cross-motion to dismiss, the Court rejects defendants' argument that the Department of Housing and Community Renewal (DHCR) has primary jurisdiction over rent overcharge claims. The First Department noted that courts have concurrent jurisdiction with the

DHCR (*Downing v First Lenox Terrace Associates*, 107 AD3d 86 [1st Dept 2013]). In any event, as class certification is granted, defendants' motion is denied as moot as the DHCR does not entertain class actions. Accordingly, it is hereby

ORDERED that the branch of plaintiffs' motion to certify the class is granted; and it is further

ORDERED that the branch of plaintiffs' motion to appoint certain lead plaintiffs and class representatives is granted, and the Court hereby appoints Heath Woodson and Daniel Larkin for the same; and it is further

ORDERED that the branch of plaintiffs' motion to appoint Newman Ferrara LLP as class counsel is granted; and it is further

ORDERED that the branch of plaintiffs' motion seeking approval of the class notice is granted (NYSCEF Doc. No. 129) with leave to amend the notice to go back as far as 2011 rather than 2013; and it is further

ORDERED that defendants' cross-motion seeking dismissal of the action is denied.

This constitutes the decision and order of the Court.

1/6/2020
DATE

ALEXANDER M. TISCH, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE