

<b>Reilly v 5504-301 E. 21st St. Manhattan LLC</b>
2020 NY Slip Op 31483(U)
May 21, 2020
Supreme Court, New York County
Docket Number: 159490/2019
Judge: James Edward d'Auguste
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. JAMES EDWARD D'AUGUSTE PART IAS MOTION 55EFM**

*Justice*

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**INDEX NO. 159490/2019**

PATRICK REILLY, JOSHUA PINKELMAN

**MOTION DATE 01/09/2020**

Plaintiff,

**MOTION SEQ. NO. 001**

- v -

5504-301 EAST 21ST STREET MANHATTAN LLC,

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43

were read on this motion/x-motion to/for DISMISS DEFENSES / STAY ACTION.

Upon the foregoing documents, the motion and cross-motion is resolved as follows:

In this action for alleged rent overcharges and declaratory relief by two alleged rent stabilized tenants, plaintiffs Patrick J. Reilly and Joshua L. Pinkelman (“tenants”), against their landlord, defendant 5504-301 East 21st Street Manhattan LLC. (“landlord”), the tenants move pursuant to CPLR 3211 and CPLR 3212 for an order dismissing landlord’s affirmative defenses, granting tenants’ summary judgment against landlord, and to dismiss landlord’s counterclaim. Landlord cross-moves for a stay of the action pursuant to CPLR 2201. Tenants’ motion is granted in part and landlord’s cross-motion is denied.

Tenants’ motion for summary judgement is denied. Tenants have not established a prima facie entitlement to summary judgment at the pleadings stage on their claims for rent overcharges and for declaratory judgment that they are entitled to a rent stabilized lease.

Tenants’ motion to dismiss landlord’s sole counterclaim for attorney fees is also denied. The landlord indicates that it is entitled to attorney fees under the terms of the operative lease.

Whether or not landlord is so entitled will be an issue in dispute in this litigation, but the counterclaim is sufficiently pled at this stage of the litigation to deny its dismissal.

Affirmative defenses are defined under the CPLR as “all matters which if not pleaded would be likely to take the adverse party by surprise or would raise issues of fact not appearing on the face of a prior pleading.” CPLR 3018(b). “Statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.” CPLR 3013. “Upon a motion to dismiss a defense, the defendant is entitled to the benefit of every reasonable intendment of its pleading, which is to be liberally construed.” *Federici Jr. v. Metropolis Night Club, Inc.*, 48 A.D.3d 741 (2nd Dep’t 2008). “If there is any doubt as to the availability of a defense, it should not be dismissed.” *Id.*, (citing, *Amerada Hess Corp. v Town of Southold*, 39 A.D.3d 442 (2007) and *Warwick v Cruz*, 270 A.D.2d 255 (2000)).

The landlord’s First, Second and Third affirmative defenses asserting that all rents charged were legal, that any overcharges, if any, were not willful, and that tenants’ fraud claims lack required specificity, are not actually affirmative defenses, but rather, are merely defenses to tenants’ claims incorporated in landlord’s denials contained in its answer. Accordingly, these purported affirmative defenses are dismissed without prejudice to landlord’s right to raise these issues in opposition to tenants’ case in chief and/or in an appropriate motion.

The landlord’s Fourth, Fifth and Sixth affirmative defenses all relate to landlord’s assertion that the rent charged was the result of a lawful deregulation of the subject apartment by virtue of high rent vacancy decontrol. To the extent these are affirmative defenses that must be pled, the Court finds them sufficient to survive dismissal at this stage of the litigation.

The Seventh affirmative defense alleges, in its entirety, that “[p]laintiffs’ claims are barred under the doctrine of laches.” NYSCEF Doc. No. 5 at ¶ 16. Tenants are correct that this affirmative

defense should be dismissed when the answer pleads “only a bare legal conclusion without supporting facts.” *See, Commissioners of Slate Ins. Fund v Ramos*, 63 A.D.3d 453, 453 (1st Dep’t 2009). However, this affirmative defense is dismissed without prejudice and landlord is granted leave to file an amended answer to include a sufficiently pled the affirmative defense of laches within 45 days of this decision and order.

Landlord’s eighth affirmative defense relates to its assertion that relevant portions of the HSTPA violates constitutional due process. The Court finds no grounds to dismiss this assertion at the pleadings stage. Accordingly, the tenants’ motion to dismiss this defense is denied.

Landlord’s cross-motion for a stay pending a litigation in federal Court challenging the constitutionality of portions of the HSTPA [*335-7 LLC, FGP 309 LLC, et. al. v. City of New York, et. al.*, No. 1:20-cv-01053] is denied. The federal action does not involve any of the parties in the instant action and to the extent that the results of that federal litigation has an impact on the instant action, such impact can be addressed at the appropriate stage of the litigation in the context of a relevant motion. The Court finds no reason to stay the instant action at this time on the basis asserted by landlord.

ORDERED, tenants’ motion to dismiss landlord’s First, Second and Third affirmative defenses is granted without prejudice to landlord’s ability to raise these defenses in the context of defending tenants’ case in chief; and it is further

ORDERED, that tenants’ motion to dismiss landlord’s Fourth, Fifth, Sixth and Eighth affirmative defenses is denied; and it is further

ORDERED, that tenants’ motion to dismiss landlord’s Seventh affirmative defense related to the doctrine of laches is granted without prejudice, and landlord is granted leave to file an

amended answer containing an amended affirmative defense related to the doctrine of laches within 45 days; and it is further

ORDERED, that tenants' motion for summary judgment on their complaint is denied; and it is further

ORDERED, that tenants' motion to dismiss landlord's counterclaim is denied; and it is further

ORDERED, that landlord's cross-motion for a stay of this action is denied; and it is further

ORDERED, that all other relief sought not expressly granted herein is denied; and it is further

ORDERED, that a preliminary conference in this action is scheduled for July 15, 2020 at 10:00am.

This constitutes the decision and order of the Court.

<u>5/21/2020</u> DATE					<u>JAMES EDWARD D'AUGUSTE, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED		<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	REFERENCE