SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. EILEEN A. RAKOWER PART 6
Justice

SEBASTIEN LE BIHAN,
Plaintiff,
- against-

27 WASHINGTON SQ. NORTH OWNER LLC, and NEW YORK UNIVERSITY,

Defendants.

INDEX NO. 153887/2019
MOTION DATE
MOTION SEQ. NO. 1
MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion for/to

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answer — Affidavits — Exhibits _____	
Replying Affidavits	

Cross-Motion: Yes X No

This action was commenced under "special proceedings-other (declaratory judgment)." Defendant New York University ("NYU") moves to dismiss the first cause of action of the Complaint which seeks a declaration that NYU is liable under an order issued in a prior Supreme Court action to which NYU was not a party pursuant to CPLR § 3211(a)(5) and § 3211(a)(7). NYU also moves to dismiss the second cause of action for attorney's fees pursuant to CPLR § 3211(a)(7). Plaintiff opposes the motion to dismiss.

As alleged in the Complaint, Plaintiff is the former rent stabilized tenant of an apartment located at 27 Washington Square North, Apartment #2E ("the Apartment"), New York, New York 10011 ("the Building"). Plaintiff currently resides in Paris, France.

The Complaint alleges that on July 1, 2004, Plaintiff commenced occupancy of the Apartment pursuant to a lease between non-party 27 LLC, as landlord, and Plaintiff, as tenant, for a period commencing July 1, 2004 and ending June 30, 2005. The lease was renewed "several times." From December 1, 2015 until June 21, 2018, Defendant 27 Washington Sq. North Owner LLC ("27 Washington") was the owner and landlord of the Apartment and Building. Since June 21, 2018, NYU was, and still is, the owner and landlord of the Apartment and Building.

The Complaint alleges that on April 27, 2010, Plaintiff commenced a proceeding against "Defendants' predecessor 27 LLC, as Landlord" ("the Prior Action") seeking to declare the Apartment to be rent stabilized and to recover for the rent overcharge. Plaintiff surrendered possession of the Apartment on February 27, 2014 while the Prior Action remained pending. 27 LCC defaulted in the Prior Action and Plaintiff was granted an inquest. Plaintiff states, "In the Supreme Court's Decision, Order and Judgment dated November 30, 2017, after the inquest Plaintiff was awarded a final judgment against 27 LLC in the amount of $132,985.00 for rent overcharge, plus his attorneys' fees in the amount of $22,627.09." Hon. Richard F. Braun, J.S.C., issued the November 30, 2017 Order. Plaintiff states that the November 30, 2017 decision was entered by the New York County Clerk's Office on December 13, 2017. Plaintiff's counsel states that Plaintiff did not receive notice of the decision until March 2019.

The Complaint alleges that on or about December 1, 2015, 27 LLC sold the Building to 27 Washington during the pendency of the Prior Action. 27 LLC was dissolved on or about August 10, 2016 "to frustrate Plaintiff's ability to collect on the impending judgment in the Prior Action." 27 Washington sold the Building to NYU on June 21, 2018. Plaintiff alleges he has been unable to collect any amount that he is owed from 27 LLC or any other entity.

Based on these allegations, the first cause of action of the Complaint seeks "a declaratory judgment declaring the rights of the parties to this action, and in particular, declaring Defendant 27 Washington and/or Defendant NYU are jointly and severally liable to Plaintiff, as 27 LLC's successors-in-interest with respect to the subject building and premises, for the amount of the Supreme Court's Decision, Order and Judgment dated November 30, 2017 and entered on December 13, 2017." The second cause of action requests "reasonable attorneys fees be awarded in Plaintiff's favor against the Defendants for the prosecution of this action, pursuant to Real Property Law 234, Rent Stabilization 26-516(a)(4), Rent Stabilization Code 2526.1(d), and/or otherwise."

NYU's Motion

NYU states that while the "Inquest Order" was filed on December 14, 2017, "[n]o judgment was entered in the Prior Action." NYU states that "[t]he last activity in the Prior Action was on December 14, 2017 when the Inquest Order was filed."

NYU submits the affidavit of Erin Jane Lynch, the Assistant Vice President of Faculty Housing and Residential Services for NYU. Lynch states that NYU is the current owner of the Building. Lynch states that in June 2018, NYU purchased the Building from 27 Washington and attaches the deed that transferred the title. 27 Washington had purchased the Building from 27 LLC in December 2015. Lynch states that NYU had no ownership interest in the Building or other connection to the Building during Plaintiff's tenancy at the Apartment or prior to June 2018. Lynch states that NYU was not the owner of the Building when any of the alleged overcharges occurred from 2004 to 2014. Lynch further states that NYU was not a party to the Prior Action and was not aware of the Prior Action until this action was commenced in April 2019.

NYU argues that the action is time barred under CPLR 213-a which provides a four year statute of limitations to bring a rent overcharge claim. NYU argues that, here, the action was commenced more than four years after the last potential overcharge since Plaintiff surrendered possession of the Apartment on February 27, 2014. NYU further argues that the Inquest Order was entered against non-party 27 LLC and cannot be enforced against NYU which was not a party to the Prior Action and purchased the Building after the Inquest Order was issued and without knowledge of the Prior Action.

Plaintiff argues that they are seeking to enforce a money judgment, and not seeking to re-litigate a rent-overcharge claim, and therefore the statute of limitations has not expired. Plaintiff further argues that Defendants' motion "ignores caselaw stating that carryover liability for treble damages will be imposed on a case-by-case basis."

Legal Standards

CPLR § 3211 (a) (5) provides that, "A party may move for judgment dismissing one or more causes of action asserted against him on the ground that . . . the cause of action may not be maintained because of . . . [the] statute of limitations . . ." "[Unless the party against whom a money judgment is granted, *inter alia*, acknowledges his or her indebtedness in a signed writing, the statute of limitations for an action to collect on a money judgment is 20 years from the date that the judgment can first be enforced." *First New York Bank for Bus. v Alexander*, 106 AD3d 138, 141 [1st Dept 2013].

CPLR § 3211(a)(7) provides that, "A party may move for judgment dismissing one or more causes of action asserted against him on the ground that: … the pleading fails to state a cause of action." In determining whether dismissal is warranted for failure to state a cause of action, the court must "accept the facts alleged as true ... and determine simply whether the facts alleged fit within any cognizable legal theory." (*People ex rel. Spitzer v. Sturm, Ruger & Co., Inc.*, 309 AD2d 91 [1st Dept 2003] [internal citations omitted]).

"Carryover liability for rent overcharges by predecessor landlords is authorized by a provision in the Rent Stabilization Code directing that, '[f]or overcharge complaints filed or overcharges collected on or after April 1, 1984, a current owner shall be responsible for all overcharge penalties, including penalties based upon overcharges collected by any prior owner' (9 NYCRR 2526.1[f][2])." *Gaines v New York State Div. of Hous. and Community Renewal*, 90 NY2d 545, 547 [1997]. "The rationale on passing on overcharge liability on to the successive owner is that a successive owner is 'in the best position to ascertain at the time of the purchase of the property whether the previous owners had been guilty of overcharges and protect itself accordingly. . . .'" *Arnold v 4-6 Bleecker St. LLC*, 2019 N.Y. Slip Op. 32683[U], 6 [N.Y. Sup Ct, New York County 2019](citations omitted). "[C]arryover liability for *treble damages* will be imposed on a case-by-case basis, depending upon the succeeding owner's degree of knowledge or culpability as to an existing overcharge." *E. 163rd St. LLC v New York State Div. of Hous. & Community Renewal*, 4 Misc 3d 169, 176 [Sup Ct 2004] (emphasis added).

Discussion

The issue of NYU's potential carryover liability is not a matter that is appropriate for a pre-answer motion to dismiss pursuant to CPLR 3211(a)(7). Whether NYU has liability depends on whether NYU knew, or should have known, about Plaintiff's prior judgment.

Wherefore it is hereby

ORDERED that Defendant New York University's motion to dismiss the first and second causes of the action of the Complaint as against New York University is denied; and it is further

ORDERED the action shall be transferred to a non-medical malpractice/general IAS Part.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: MAY 26, 2020

ENTER: _____ J.S.C.

HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION