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

**PRESENT:** **HON. W. FRANC PERRY** **PART** **IAS MOTION 23EFM**

***Justice***

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STEVEN NETTLES, ELLEN LAGOW-NETTLES,

Plaintiff,

- v -

WESTMAN REALTY CO., ARGO REAL ESTATE, LLC., WESTMAN REALTY COMPANY, LLC

Defendant.

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**INDEX NO.** 157349/2019

**MOTION DATE** 01/16/2020

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15

were read on this motion to/for DISMISSAL.

In this residential landlord tenant action where plaintiffs Steven Nettles and Ellen Lagow-Nettles ("plaintiffs") are seeking to recover damages for alleged rent overcharges, defendants Westman Realty Co., Argo Real Estate, LLC., and Westman Realty Company, LLC, ("defendants") move, pursuant to CPLR 3211 (a)(5), to dismiss the complaint (motion sequence number 001), on the grounds that the claims asserted are barred by the doctrine of collateral estoppel.

**BACKGROUND**

Plaintiffs commenced the instant action by filing a summons and verified complaint on July 25, 2019 seeking monetary damages, declaratory, equitable and injunctive relief pursuant to the Housing Stability and Protection Act of 2019, ("HSTPA") alleging that defendants failed to provide plaintiffs with rent stabilized leases and regulated rent increases pursuant to Rent Stabilization Law ("RSL") §26-516. (NYSCEF Doc. No. 1). Plaintiffs had commenced a prior action in this court entitled *Nettles v Westman Realty Mgmnt Co.*, Index No. 151296/2018 (the

"Prior Action"), alleging the identical rent overcharge claims that are currently being asserted in this action with respect to plaintiffs' apartment. In the Prior Action, the Hon. James E. d'Auguste, granted defendants' motion to dismiss, marked the case disposed and directed the Clerk to enter judgment dismissing the complaint. (NYSCEF Doc. No. 9). The order was entered by the Clerk of the Court on September 25, 2018. Plaintiffs did not appeal the decision and order, nor did they seek to reargue or renew the court's decision in the Prior Action.

In the complaint, plaintiffs assert the exact same claims, with the same factual allegations that were asserted in Counts "One" through "Three" of the complaint filed in the Prior Action; the complaint does not, however, assert the previously dismissed claim for damages based upon GBL § 349. (NYSCEF Doc. No. 1). Defendants move to dismiss the complaint as this court has already conclusively determined that the subject claims should be heard by the DHCR and are thus barred by the doctrine of collateral estoppel. In addition, defendants contend that the HSTPA cannot be applied retroactively to allow plaintiffs new action, alleging identical rent overcharge claims, to proceed in this court because the claims were not "pending" at the time of HSTPA's enactment on June 14, 2019.

In opposition, plaintiffs contend that the Prior Action was dismissed on jurisdictional grounds, not on the merits and thus, the newly pled rent overcharge claims "are currently ripe are still pending and have not been adjudicated." (NYSCEF Doc. No. 14, ¶ 3). Plaintiffs posit that since the HSTPA was enacted as a remedial statute, collateral estoppel does not bar the claims alleged in the complaint even though they are identical to those claims already dismissed by the court in favor of being heard by the DHCR.

**DISCUSSION**

The Court of Appeals succinctly summarized the law on preclusion as follows:

> The preclusive effect of a judgment is determined by two related but distinct concepts—issue preclusion and claim preclusion—which collectively comprise the doctrine of 'res judicata.' ... While issue preclusion applies only to issues actually litigated, claim preclusion (sometimes used interchangeably with 'res judicata') broadly bars the parties or their privies from relitigating issues that were or could have been raised in that action. The doctrine encompasses the law of merger and bar—it precludes the relitigation of all claims falling within the scope of the judgment, regardless of whether or not those claims were in fact litigated.

*Paramount Pictures Corporation v. Allianz Risk Transfer AG*, 31 N.Y.3d 64, 72, [2018] [internal quotation marks and citations omitted].

Application of this well settled rule of law, leaves little doubt that the jurisdictional issue related to the forum where plaintiffs rent overcharge claims will be heard, has already been litigated and decided by the court in the Prior Action. Indeed, plaintiffs acknowledge that the doctrine of collateral estoppel bars relitigating claims where there is an identity of issues and where there was a full and fair opportunity to contest the decision now said to be controlling. (NYSCEF Doc. No. 14, ¶ 6).

Defendants have aptly demonstrated that the claims asserted in the complaint are identical to those in the Prior Action, and plaintiffs do not contend that they did not have a full and fair opportunity to contest the decision dismissing the complaint in favor of the claims being heard by the DHCR. Rather, plaintiffs maintain that the enactment of the HSTPA, almost nine months after their claims were dismissed, allows them to commence a new proceeding notwithstanding the doctrine of collateral estoppel.

Plaintiffs' argument sidesteps the oft-quoted rule that a judgement issued in a prior action bars parties from relitigating issues that "were or could have been raised in that action." *Paramount Pictures Corporation v. Allianz Risk Transfer AG*, 31 N.Y.3d at 72. Plaintiffs could

have raised the claims asserted in the complaint in the Prior Action by filing an appeal or in a motion to renew, based on the newly enacted HSTPA; the fact that they did not precludes them from relitigating those claims in the newly filed complaint.

Plaintiffs contention that the statutory amendments contained in Part F of the HSTPA are remedial, does not change this result and ignores the plain statutory language. Indeed, plaintiffs' analysis runs afoul of elementary rules of statutory construction. The text of a statute is the clearest indicator of legislative intent and "unambiguous language [should be construed] to give effect to its plain meaning" (*Mestecky v City of New York*, 30 NY3d 239, 243 [2017], *rearg denied*, 30 NY3d 1098 [2018], quoting *Matter of DaimlerChrysler Corp. v Spitzer*, 7 NY3d 653, 660 [2006]).

Recently, in *Dodos v 244-246 E. 7th Street Invs., LLC*, 2019 NY Slip Op 33475[U] [Sup Ct, NY County 2019], the court denied plaintiff-tenant's renewal motion seeking to reassert rent overcharge claims that had previously been dismissed in favor of such claims being heard by the DHCR, noting that the HSTPA specifically provides that "the statutory amendments contained in Part F shall take effect immediately and shall apply to any claims *pending or filed on or after such date* (*Stafford v A&E Real Estate Holdings, LLC*, 2019 NY Slip Op 33039 [U] at *3 [internal quotation marks and citation omitted] [emphasis added])". The court held that since its order dismissing the action was issued on June 3, 2019, prior to the enactment of the HSTPA on June 14, 2019, "the disposed action is not a 'pending' matter as contemplated by the statute (compare *Dugan v London Terrace Gardens, L.P.*, 177 AD3d 1, 8, [1st Dept 2019]; *Alekna v 201-217 W. Portfolio Owner LLC*, 2019 NY Slip Op 33256 [U], *2 [Sup Ct, NY County 2019])." (*Dodos v 244-246 E. 7th Street Invs., LLC*, 2019 NY Slip Op 33475[U], *11 [Sup Ct, NY County 2019]).

Likewise, here plaintiffs' claims were not "pending" as of the date the HSTPA was enacted, having been dismissed on September 25, 2018, almost nine months earlier, and, as in *Dodos v 244-246 E. 7th Street Invs., LLC*, the disposed action is not a "pending" matter as contemplated by the plain language of the statute (compare *Williams v Daphne Realty Corp.*, 2020 NY Slip Op 31466 [U], [Sup Ct, NY County 2020]; *Streb v Whistlepig Assoc., Inc.*, 2020 NY Slip Op 31489 [U], [Sup Ct, NY County 2020]).

Accordingly, it is hereby

ORDERED that the motion of defendants Westman Realty Co., Argo Real Estate, LLC., and Westman Realty Company, LLC, (motion sequence number 001) to dismiss the complaint is granted and the complaint is dismissed, with costs and disbursements to said defendants as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of this Court.

6/18/2020
DATE

W. FRANC PERRY, J.S.C.

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