Diagonal Realty LLC v Estella
2021 NY Slip Op 31500(U)
April 14, 2021
Civil Court of the City of New York, New York County
Docket Number: 64090/16
Judge: Elizabeth J. Tao
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK - HOUSING PART H
--X
Diagonal Realty LLC

Index No. 64090/16

Petitioner,

DECISION/ORDER

-Against –

Franciso Estella, Luis Reinoso
& Geanette Compres

Respondents.

--X

Tao J,

Respondents move for an Order pursuant to CPLR §2221 permitting re-argument of a decision and order of this court dated August 12, 2020 and upon re-argument, vacating the court's decision/order and dismissing the petition and granting summary judgment on respondents' claims seeking to recover rent damages and statutory penalties arising from petitioner's rent overcharge and legal fees.

Petitioner opposes respondents' motion in its entirety.

Petitioner commenced this end of lease holdover May 24, 2016, alleging respondents lease agreement had expired on March 31, 2016 and sought possession of 551 West 174th Street, Apt 14, NY, NY. Respondents filed an answer alleging among other things that the apartment was still subject to rent regulation. On January 23, 2017 respondents signed a stipulation awarding the petitioner a judgment of possession with the respondents vacating the premises February 28, 2017. Respondents thereafter moved to vacate the stipulation, for leave to file an amended answer, for summary judgment dismissing the petition and leave to conduct discovery. The court by Order dated December 29, 2017 vacated the stipulation and granted leave to file an amended answer but denied respondents' motion for summary judgment. Respondents sought to reargue the court's 12/29/17 decision/order and by Order dated November 27, 2018 the court granted respondents leave to conduct discovery but again denied their motion for summary judgment. Upon completion of discovery, respondents again moved for summary judgment which this court's denied by Order dated August 12, 2020. Respondents now seek to reargue the court's August 12, 2020 decision/order.

Respondents argue there are no material issues of fact that require a trial and state that what is before the court are questions of law based upon undisputed or admitted facts and admissible evidence. They state their motion identify four questions of law with no material factual issues and that each of these issues, standing alone, would be completely dispositive as to the rent regulatory status of the subject apartment.

Respondents state the subject apartment remains rent stabilized because there was no vacancy that triggered destabilization and the law mandates there can be no vacancy decontrol without an actual vacancy and that the prior tenant occupied the apartment continuously from 2007 through 2013. Secondly, that the prior tenant had a preferential rent throughout their tenancy and due to petitioner's failure to properly file rent registrations with DHCR, by operation of the law, the rent should have remained frozen at the last legally registered rent, an amount which would have been below that required for destabilization. Thirdly, there is no factual dispute that the DHCR has never issued an order revoking prior rent reduction orders (RRO) and that these orders remain in effect as DHCR has not rescinded them. Finally, respondents argue petitioner cannot show the prior registered rents were legal nor can they produce any records to substantiate the rent increases in 2006 and concludes that, as a matter of law, the apartment remains subject to rent stabilization and mandates dismissal of the petition.

Respondents assert, if the subject apartment is subject to rent stabilization, the remaining question before the court would be whether they were willfully overcharged. As a matter of law, the DHCR's rent reduction orders remain in full force until that agency revokes them, there is no question that there are substantial overcharges. Thus, their motion for re-argument should be granted and upon re-argument the court should enter summary judgment dismissing the holdover petition, declaring void all DHCR registrations after 2006 and declaring the apartment subject to rent stabilization.

Petitioner in opposition states the vacancy that triggered deregulation occurred in 2008 and when the prior tenants vacated in 2014, the rent at that time exceeded the deregulation threshold notwithstanding any errors in calculation or late registrations that may have occurred in 2007. That the respondents' claim that the rent could not have exceeded the threshold because the rent was frozen is what is in dispute. Further that the law is in flux regarding high rent vacancy deregulation and respondents' argument on the effect of charging the prior tenant a preferential rent has no bearing on calculation of the new rent.

Additionally, petitioner states the respondents have concluded that the two rent reduction orders issued in 1989 and 1991 are dispositive of the legal rent to be charged but have failed to properly authenticate electronic records produced and further argues that the subject premises was the subject of litigation in 2000 resulting in a stipulation that set the rent with full knowledge of all existing RRO at that time. Thus, the parties are bound by the stipulation in which matters of contention were fully litigation and resolved.

Petitioner finally argues, as the subject premises remained regulated through 2013, and the issue before the court is whether the increases taken to arrive at a rent in excess of the threshold in 2014 were proper. That the unexplained increase in 2007 would not trigger a

finding that the apartment was properly deregulated as it only relates to the question of overcharge. Petitioner states there are issues of fact as to the calculations and increases applied and respondents are not entitled to summary judgment as these issues can only be determined at trial.

To prevail on a motion for summary judgment, the moving party must demonstrate its entitlement to a judgment as a matter of law and to establish the absence of any triable issue of fact. **Winegrad -v- New York Univ. Med. Center, 64NY2d 851 (1985), Zuckerman -v- City of New York, 49 NY2d 557, 560 (1980)**.

In the instant case, one of the issues raised by the parties is the alleged improper deregulation of the subject apartment. Respondents assert petitioner was not permitted to deregulate the subject apartment, based on a high rent exemption, while rent reduction orders were in effect. Petitioner, in opposition, argues these orders were resolved by stipulation in 2000. The court notes these orders are over thirty years old and in the intervening period there have been tenancy changes, possibly repairs made in the apartment and there has also been litigation. All these instances raise questions as to what the current condition the apartment is in, whether repairs were made and what repairs were completed, and if the repairs listed on the prior RRO were completed and when and under what circumstances the apartment was deregulated. All these questions present issues of fact raised which can only be resolved at trial.

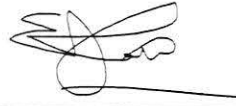
CPLR 2221(d)(2) provides that a motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion." "Motions for re-argument are addressed to the sound discretion of the court which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law or for some (other) reason mistakenly arrived at its earlier decision." **Grimm -v- Bailey, 105 AD3d 703, 704, (2nd Dept. App Div 2013), Ahmed -v- Pannone, 116 AD3d 802, 805 (2nd Dept. App Div 2014).**

Respondents argue the court erred in denying its motion by issuing a one sentence decision on the merits of the motion without addressing the questions of law presented in respondents' motion to for summary judgment. The court has now briefly addressed one of issues raised and stands by its August 12, 2020 Order. Based on the foregoing respondents' motion to reargue is denied.

Accordingly, respondents' motion to reargue and vacate this court's decision and Order dated August 12, 2020 dismissing the petition is denied. The proceeding is restored to the Part H virtual calendar on May 14, 2021 at 10:00 AM for all purposes. Counsels will receive a Teams invite shortly.

This constitutes the decision and Order of the court.

Dated: April 14, 2021
New York, New York



Elizabeth J. Tao – Housing Court Judge

Petitioner's Attorney
Kaplain& Duval, LLP
647 Franklin Avenue, Ste. 202
Garden City, New York 11530
Attn: Leonard R. Kaplain, Esq.
516-535-1700
lkaplain@kdlawlp.com

Respondent's Attorney
NMIC Legal Services
45 Wadsworth Avenue
New York, New York 10033
Attn: Matthew J. Chachere, Esq.
212-822-8300/929-314-3550
matthewchachere@nmic.org