

Tribbs v 326-338 E 100th LLC
2021 NY Slip Op 31593(U)
May 11, 2021
Supreme Court, New York County
Docket Number: 150179/2018
Judge: W. Franc Perry
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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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INDEX NO. 150179/2018

STUART TRIBBS,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 007

- v -

326-338 E 100TH LLC, STEVE CROMAN

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 263, 266, 269, 271, 273, 274, 275, 276, 277

were read on this motion to/for JUDGMENT - SUMMARY

Plaintiff Stuart Davidson Tribbs moves, pursuant to CPLR 3212 (a), for summary judgment on his second amended complaint ("Complaint") and for an order dismissing defendants' affirmative defenses and counterclaims. The gist of the Complaint is that plaintiff, and the members of the class that he represents, all of whom resided in a building whose owner received J-51 tax benefits, but none of whom received rent stabilized leases, are entitled to have their rents retroactively set by the default formula, as provided for at §2526.1 of the Rent Stabilization Code.

This area of the law is governed by a handful of canonical cases, which the court will briefly summarize. In Roberts v Tishman Speyer Props., L.P., (13 NY3d 270 [2009]), the Court held that luxury deregulation, which allowed landlords to raise rents from rent stabilized levels to market rates, was unavailable in buildings that had received tax benefits, pursuant to the J-51 Program. Plaintiffs contend that, in the seven years between the Roberts decision and the expiration of J-51 benefits at the building, defendants deregulated more than 30 apartments. In Gersten v 56 7th Ave, LLC (88 AD3d 189 [1st Dept 2011]), the Court held that Roberts applied

retroactively, and that all apartments that had been luxury decontrolled in buildings receiving J-51 tax benefits had to be promptly registered with the New York State Department of Housing and Community Renewal (DHCR). In *Matter of Park v DHCR*, 150 AD3d 105 (1st Dept 2017), the Court held that, as the appeal in *Gersten* had been withdrawn, owners who had decontrolled apartments while receiving J-51 benefits were required to register their apartments and restore them retroactively to rent stabilization. As they had with regard to *Roberts*, defendants failed to comply with the requirements of *Gersten* and *Park*. In *Matter of Regina v New York State Div. of Hous. and Community Renewal*, 35 NY3d 332 (2020), the Court held that, where a landlord had committed fraud, the default method may be used to set the rent; *see also 435 Cent. Park W. Tenant Assn. v Park Front Apts., LLC*, 183 AD3d 509, 510-511 (1st Dept 2020). A claim of fraud, in this context, may be made out by a failure to comply with the dictates of *Roberts* and *Gerstein*. *Nolte v Bridgestone Assoc., LLC*, 167 AD3d 498, 499 (1st Dept 2018); *Kreisler v B U Realty Corp.*, 164 AD3d 1117 (1st Dept 2018). Fraud may also be shown by an owner's failure to register apartments with DHCR, coupled with increases in rent. *Stafford v A&E Real Estate Holdings, LLC*, 188 AD3d 583, 584 (1st Dept 2020), citing *Butterworth v 281 St. Nicholas Partners LLC*, 160 AD3d 434 (1st Dept 2018). Moreover, "[a]ssumptions regarding the regulatory status of an apartment may amount to 'willful ignorance, which constitutes willful conduct, particularly since defendants are sophisticated property managers and owners.'" *Montera v KMR Amsterdam LLC*, 193 AD3d 102, 107 (1st Dept 2021), quoting *Grady v Hessart Realty L.P.*, 178 AD3d 401, 405 (1st Dept 2019).

Defendants contend that, in *Matter of Regina, supra*, the Court

"found insufficient evidence of a fraudulent scheme—notwithstanding the improper deregulation and or failures to register the subject apartments until well after *Roberts* and/or *Gersten*."

NYSCEF Doc. No. 223 at 19. That is incorrect. The landlords in three of the four cases decided

in *Matter of Regina*, registered before the decision in *Gersten* was issued. See *Matter of Regina Metro. Co. LLC v DHCR*, 164 AD3d 420, 430 (1st Dept 2018); *Raden v W 7879 LLC*, 164 AD3d 440, 440 (1st Dept 2018); *Reich v Belmord Partners, LLC*, 2017 WL 4074 627 (*Sup Ct, NY County* 2017), *affd* 168 AD3d 482 (1st Dept 2019). The landlord in the fourth case, *Taylor v 72A Realty Assocs. LP.* (161 AD3d 95 [1st Dept 2017]), was sued in 2014. Even there, however, the base date, that is, the earliest date preceding a rent overcharge complaint from which the legal rent can be calculated, preceded the decision in *Gersten*.

By showing that plaintiff's apartment was improperly deregulated, and its rent both set at a level unrelated to any previous regulated rent and not timely registered with DHCR, plaintiff has made a prima facie case of entitlement to the relief sought. Defendants have submitted no effective opposition.

The court now turns to defendants' 23 affirmative defenses, and to their two counterclaims. The first affirmative defense is that the Complaint fails to state a claim for rent overcharge. That defense fails, for the reasons stated in the preceding paragraph. The second, third, and fourth affirmative defenses state that plaintiff's claims are moot, because he vacated his apartment prior to commencing this action. However, a class plaintiff can maintain claims on behalf of the class, that the plaintiff may not raise on his or her own behalf. *Nawrocki v Prato Constr. & Dev. Corp.*, 82 AD3d 534, 535 (1st Dept 2011) (plaintiffs who stopped working for defendant in 2004 could represent class of workers employed in 2007); *Weinberg v Hertz Corp.*, 116 AD2d 1, 7 (1st Dept 1986), *affd* 69 NY2d 979 (1987) (plaintiff could represent class although he, unlike class members, did not have an individual contract claim). The fifth through the eighth affirmative defenses are based upon a decision by the Tenant Protection Unit (TPU) of the Department of Housing and Community Renewal with regard to plaintiff's rent. Defendants now concede that the TPU

decision was based on a method that was explicitly rejected in *Matter of Regina*. NYSCEF Doc. No. 223, 6-7. The ninth through the 16th affirmative defenses, and the 23rd, challenge the prosecution of this action as a class action and are improper, both because they are not addressed to the complaint, and because a class and a subclass have been certified.

Defendants' two counterclaims seek, respectively, an order severing the claims of the class members and requiring those claims to be tried separately, and, in the event that the class members' leases contain a provision for attorney's fees, an award of such fees. As to the first of these, the class, as well as a subclass, have been certified. To the extent that defendants seek decertification of the class, they are free to move therefore. They may not gain that relief by way of a counterclaim. As for the second, defendants, who have the burden of proof with regard to their counterclaims, have failed to produce the relevant leases. Accordingly, it is hereby

ORDERED that plaintiff Stuart Davidson Tribbs's motion for summary judgment is granted; and it is further

ORDERED that plaintiff's motion to dismiss defendants' affirmative defenses and counterclaims is granted; and it is further

ORDERED that plaintiff settle judgment on notice in accordance with this Decision and Order and Section 202.48 of the Uniform Rules for the Supreme Court and the County Court (22 NYCRR § 202.48).

05/11/21
DATE

W. FRANC PERRY, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
	<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE