

<b>Morrissey v 400 W. 59th St. Partners, LLC</b>
2021 NY Slip Op 32107(U)
October 29, 2021
Supreme Court, New York County
Docket Number: Index No. 152533/2020
Judge: John J. Kelley
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

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

**PRESENT: HON. JOHN J. KELLEY PART 56M**

*Justice*

-----X

JANET MORRISSEY

Plaintiff,

- v -

400 WEST 59TH STREET PARTNERS, LLC,

Defendant.

-----X

INDEX NO. 152533/2020

MOTION DATE 06/15/2021

MOTION SEQ. NO. 001

**DECISION, ORDER, and  
JUDGMENT**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 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 were read on this motion to/for SUMMARY JUDGMENT- AFTER JOINDER.

In this action for a judgment declaring that a residential apartment is subject to rent regulation, the defendant, 400 West 59th Street Partners, LLC, moves for summary judgment dismissing the complaint against it and for an award of attorneys' fees. The plaintiff, Janet Morrissey, opposes the motion and cross-moves for (a) summary judgment declaring that her tenancy is subject to rent stabilization and must remain rent stabilized until she chooses to vacate her apartment voluntarily, (b) an award for \$1,995 in rent overcharges, plus treble damages, and (c) an award of attorneys' fees. The motion is granted to the extent that it is declared that the plaintiff's tenancy is not subject to rent regulation, and the motion is otherwise denied. The cross motion is denied.

On December 19, 2003, the plaintiff became a tenant of apartment S9B (the apartment), in a building located at One Columbus Place, New York, New York, also known as 400 West 59th Street, New York, New York (the building), pursuant to a lease between the defendant and her. At that time, the defendant was receiving property tax abatement benefits pursuant to Real Property Tax Law (RPTL) § 421-a with respect to its residential units, and such abatement was

set to expire on June 30, 2018. As a consequence, all units in the building were subject to rent stabilization during the period that the tax benefits remained in effect, or until June 30, 2018.

On September 1, 2017, the plaintiff signed a rent-stabilized lease renewal, with a two-year term ending on December 31, 2019, at a “preferential” rent of \$3,500 per month. On October 18, 2018, the defendant started receiving “extended” tax abatement benefits pursuant to RPTL 421-a(17), which creates a class of “extended affordability” properties that are entitled to certain extended tax benefits. In October 2019, the plaintiff was offered and executed a non-stabilized lease for a one-year term, commencing on January 1, 2020, at a monthly rent of \$3,600. On March 6, 2020, she commenced this declaratory judgment action. On October 16, 2020, the defendant filed an answer to the complaint. On December 28, 2020, the defendant made the instant motion for summary judgment dismissing the complaint against it, with prejudice, and for an award for attorneys’ fees. On February 26, 2021, the plaintiff opposed the motion and cross-moved, inter alia, for summary judgment declaring that her tenancy is rent stabilized and will remain as such until she voluntarily vacates her apartment.

The defendant established its prima facie entitlement to judgment as a matter of law (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). RPTL 421-a provides that an apartment in a building receiving benefits remains rent stabilized for the entire tax benefit period, “notwithstanding the provisions of any local law for the stabilization of rents” (RPTL 421-a; see *Yorkville Plaza Assoc., LLC v Reynolds*, 71 Misc 3d 982, 990 [Civ Ct, N.Y. County 2021]). RPTL 421-a(2)(f) provides, in pertinent part:

“Notwithstanding the provisions of any local law for the stabilization of rents in multiple dwellings or the emergency tenant protection act of nineteen seventy-four, the rents of a unit shall be fully subject to control under such local law or such act, unless exempt under such local law or such act from control by reason of the cooperative or condominium status of the unit, for the entire period during which the property is receiving tax benefits pursuant to this section for the period any such applicable law or act is in effect, whichever is shorter. Thereafter, such rents shall continue to be subject to such control to the same extent and in the

same manner as if this section had never applied thereto, except that such rents shall be decontrolled if:

\*\*\*\*\*

"(ii) with respect to units which become subject to the provisions of this section after the effective date of this subparagraph, such tax benefit period as provided in the opening paragraph of this paragraph or applicable law or act shall have expired and either each lease or renewal thereof for such unit for the tenant in residence at the time of such decontrol has included a notice in at least twelve point type informing such tenant that the unit shall become subject to such decontrol upon the expiration of such tax benefit period as provided in the opening paragraph of this paragraph or applicable law or act and states the approximate date on which such tax benefit period as provided in the opening paragraph of this paragraph is scheduled to expire; or such unit becomes vacant as provided under subparagraph (i) of this paragraph."

This subdivision clearly and unambiguously provides the manner in which a rent stabilized apartment may be deregulated (*see Giannattasio v Cialini*, 165 Misc 2d 249, 252-253 [Civ Ct, Kings County 1995]).

In support of its motion, the defendant submits, among other things, copies of the plaintiff's December 19, 2003 lease and each renewal lease thereafter. The initial lease and renewal leases all contained an RPTL 421-a rider with notice, in capitalized font, that the apartment was rent stabilized by virtue of the building's receipt of an RPTL 421-a exemption, due to expire on June 30, 2018, after which the apartment would no longer be subject to the rent regulation. The plaintiff also signed and/or initialed and dated each rider.

In her affidavit, the plaintiff stated that she did not have a copy of her first lease and, therefore, was not in a position to dispute the authenticity of the copy submitted by the defendant. She further asserted that several of her renewal leases, copies of which were also submitted by the defendant, contained RPTL 421-a riders stating that the expiration date of the tax abatement was June 30, 2019, instead of June 30, 2018, which was the correct date. The plaintiff contends that such a misstatement made her apartment ineligible to be deregulated. Contrary to the plaintiff's contention, a minor misstatement as to the "approximate date" on which the tax benefit was set to expire does not render the rider invalid (*see Ogando v Pamela*

*Equities Corp.*, 44 AD3d 367, 367 [1st Dept 2007]; *Mayflower Dev. Corp. v Deri*, 36 Misc 3d 128[A], 2012 NY Slip Op 51205[U] [App Term, 1st Dept 2012]). Since the defendant provided the plaintiff with proper notice in all of her leases, the defendant was permitted to deregulate the apartment upon the expiration of the tax benefits, in accordance with RPTL 421-a(2)(f).

The plaintiff argues that, despite the expiration of the initial tax benefit, RPTL 421-a(2)(f) nonetheless affords her apartment continuing rent stabilization status, beginning on the date when the building started receiving “extended” tax benefits under RPTL 421-a(17). She points to the language in RPTL 421-a(2)(f), which provides that “the rents of a unit shall be fully subject to control” under rent stabilization “for the entire period during which the property is receiving tax benefits pursuant to this section,” and asserts that, inasmuch as RPTL 421-a(17) articulates no exception to that rule, rent stabilization of her apartment must continue by virtue of the building receipt of extended benefits. RPTL 421-a(17), however, provides tax benefits for properties that had previously received RPTL 421-a benefits, in which at least 20% of the units are characterized as “affordable housing units” and an additional 5% of units are made “affordable”; in such buildings, only the existing affordable housing units and the new affordable housing units must remain subject to rent stabilization (see RPTL 421-a[17][f][i]). The remaining units, that is, those that are not designated as “affordable,” are not subject to extended rent stabilization and, therefore, may be deregulated upon the expiration of the initial RPTL 421-a tax benefits, as provided in RPTL 421-a(2)(f)(ii) (see RPTL 421-a[17][a]).

The defendant established that the plaintiff’s apartment is not a low-income unit or an “affordable housing unit” within the meaning of RPTL 421-a(17)(a)(iii), and that the plaintiff does not claim that her apartment is or ever was an “affordable housing unit.” Furthermore, as a requirement of RPTL 421-a(17), the defendant recorded a restrictive declaration (see RPTL 421-a[17][a][xvii]; 421-a[17][m]), which identified the affordable housing units in the building that were to be subject to the rent-stabilization requirement, and the plaintiff’s apartment was not enumerated therein. In opposition to the defendant’s showing in this regard, the plaintiff

failed to raise a triable issue of fact, and presented no convincing legal argument as to why her apartment must remain rent regulated by virtue of the designation of the building as an “extended affordability property,” and the concomitant tax benefits afforded thereby, even though her apartment is not an “affordable housing unit.”

Therefore, the plaintiff’s apartment was properly deregulated when the building’s previous RPTL 421-a benefits expired, and properly excluded under the extended rent regulation provided by RPTL 421-a(17) to the “affordable housing units” within the building.

Although the subject lease contains a clause providing for the reimbursement of legal fees to the defendant in the event of a lease default, or if it has to defend an action as a result of the tenant’s conduct, that branch of the defendant’s motion seeking an award of attorneys’ fees must be denied. This action did not arise from a lease default but, rather, sought a declaration of statutory rights and ancillary relief and, therefore, does not justify an award of attorneys’ fees (see *Dodd v 98 Riverside Dr., LLC*, 2011 NY Slip Op 32708[U], 2011 NY Misc LEXIS 4992 [Sup Ct, N.Y. County, Oct. 8, 2011] [Gische, J.]).

Even though the court concludes that the plaintiff is not entitled to the declaration that she seeks, dismissal of the complaint is not the appropriate relief that should be awarded to the defendant; rather, the court must make the appropriate declaration that the plaintiff’s apartment is not subject to rent stabilization (see *Lanza v Wagner*, 11 NY2d 317, 334 [1962]).

Accordingly, it is

ORDERED that the defendant’s motion is granted to the extent that it is awarded summary judgment declaring that the plaintiff’s tenancy is not subject to rent stabilization, and the motion is otherwise denied; and it is further,

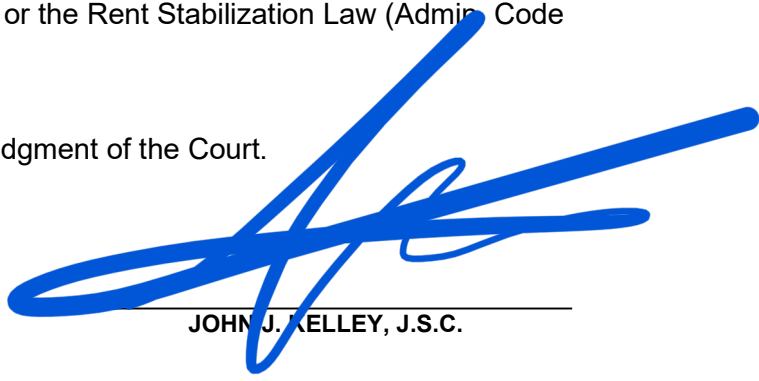
ORDERED that the plaintiff’s cross motion is denied; and it is,

ADJUDGED that it is declared that the plaintiff’s tenancy, as set forth in her current lease with the defendant in connection with Apartment S9B at One Columbus Place, New York, New York, also known as 400 West 59th Street, New York, New York, with a term commencing on

January 1, 2020 and ending on December 31, 2020, is not subject to regulation pursuant to the Rent Stabilization Code (9 NYCRR 2520.1-2531.9) or the Rent Stabilization Law (Admin. Code of City of N.Y. §§ 26-501-26-520).

This constitutes the Decision, Order, and Judgment of the Court.

10/29/2021  
DATE



\_\_\_\_\_  
JOHN J. KELLEY, J.S.C.

MOTION:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> REFERENCE
<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

CROSS MOTION:

APPLICATION:

CHECK IF APPROPRIATE: