

<b>326 Starr, LLC v Martinez</b>
2021 NY Slip Op 32894(U)
March 30, 2021
Civil Court of the City of New York, Kings County
Docket Number: L&T Index No.: 82348/19
Judge: Thomas M. Fitzpatrick
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS  
PART R

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326 STARR, LLC

Petitioner,

L&T Index No.: 82348/19

DECISION /ORDER

-against-

CHRISTOPHER MARTINEZ; ALEXANDER PROSE,

Hon.: Thomas M. Fitzpatrick

Respondents.

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Recitation, as required by CPLR 2219(a), of the papers considered in review of this motion:

<b>Papers</b>	<b>Numbered</b>
Notice of Motion and Affidavits Attached.....	1
Order to Show Cause and Affidavits Annexed.....	
Affirmation in Opposition.....	2
Replying Affidavits.....	3
Exhibits.....	
Oral Argument.....	

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Petitioner moves by Notice of Motion (not Order to Show Cause) for leave to reargue the decision and order of the Hon. Zhuo Wang dated December 15, 2020, which granted a motion to dismiss this summary proceeding for Nonpayment of Rent.

CPLR 2221(a) requires that a motion to reargue should be referred to the Judge who made the decision, unless that judge is unable to hear it. The Hon. Zhuo Wang is no longer a Housing Judge. He has been elected to the Civil Court, and assigned to the Criminal Court, therefore Judge Wang, per the Administrative Judge, is not available to hear this motion for reargument.

In a thoughtful reasoned decision, Judge Wang ruled that the Rent Act of 2015 did not permit high rent deregulation of rent stabilized apartments that crossed the rent threshold for deregulation after the apartment became vacant. He based this determination upon his detailed analysis of application of rules of statutory interpretation.

Petitioner makes a compelling argument that Judge Wang's decision misconstrued the law because it began with a finding that "there appears to be no appellate opinion and only one reported lower court decision interpreting the 2015 Act". The one lower court decision that Judge Wang refers to is People's Home Improvement v Kindig, 2019 NY Slip Op 29301, (Civ.Ct.,Kings Co, Hon. Kenneth Barany). Petitioner, however, argues that the Appellate Division First Department decision in Ruggerino v. Prince Holding 2012 LLC, 170 A.D.3d 568 (1<sup>st</sup> Dept. 2019) is controlling authority on the question of vacancy high rent deregulation after the Rent Act of 2015. Petitioner also argues that the existence of Section 2520.11(r)(10)(i) of the Rent Stabilization Code, in effect prior to the Housing Stability and Tenant Protection Act, is part of the statutory scheme in effect at the time of the alleged deregulation of the subject premises. Rules of statutory interpretation would require the court to reconcile the statutes. It is also necessary to examine the intent of the Rent Act of 2015. It's purpose could arguably have been to simply adjust the dollar amount of the vacancy deregulation threshold, and not to achieve anything that is not expressly stated. Petitioner makes additional persuasive arguments.

Among the arguments made by respondent in opposition is that procedurally, it would be an improper exercise of this court's discretion to vacate the decision and order of Judge Wang because this is not an appellate court, and it should not act as one. Respondent's attorney cites Matter of Wright v. County of Monroe, 45 A.D.2d 932 (4<sup>th</sup> Dept. 1974) which held that even where a judge was unavailable because he had retired, it was an abuse of discretion to decide a reargument motion when an appeal was available. In the case at bar, petitioner has filed a Notice of Appeal, and that remedy is available.

Further, if this court were to vacate Judge Wang's decision and order after reargument, then there would be differing opinions between the Kindig court and this one on the issue of deregulation of rent stabilized apartments where the deregulation threshold was crossed during a vacancy that occurred after the Rent Act

of 2015 and the effective date of HSTPA amendment. Differing opinions between courts of co-ordinate jurisdiction would still necessitate appellate guidance. Therefore, this court will exercise its discretion and deny leave to reargue.

Accordingly, the motion is denied.

The foregoing constitutes the decision and order of the court.

March 30, 2021

  
Thomas Fitzpatrick, JHC