

Perugini v 162-164 82nd St., LLC
2022 NY Slip Op 32643(U)
August 5, 2022
Supreme Court, New York County
Docket Number: Index No. 150405/2019
Judge: Mary V. Rosado
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO

PART 33

Justice

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INDEX NO. 150405/2019

MICHAEL PERUGINI

MOTION DATE 09/14/2021

Plaintiff,

MOTION SEQ. NO. 001

- v -

162-164 82ND STREET, LLC A/K/A 162-164 EAST 82ND STREET, LLC,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

Oral argument took place on May 19, 2022 with Ellery Ireland appearing for Plaintiff Michael Perugini ("Tenant") and Andrew D. Briker appearing for Defendant 162-164 82nd Street, LLC ("Landlord"). Upon the foregoing documents, it is decided and ordered as follows.

I. Factual and Procedural Background

Landlord/Defendant owns the building located at 162 East 82nd Street, New York, New York 10028 (the "Building") (NYSCEF Doc. 1 at ¶ 6). An agent of Landlord states that following the vacatur of a rent stabilized tenant, the legal rent was lawfully increased to the deregulation threshold through statutory post-vacancy increase and individual apartment improvements ("IAI") (NYSCEF Doc. 19 at ¶3). It is undisputed that Tenant entered into a lease with Landlord for apartment 2B (the "Apartment") in the Building on November 15, 2017 for \$2400.00 per month which was followed by a renewal lease for a one year term from December 1, 2018 through November 30, 2019 for \$2520.00 per month (Id. at ¶¶ 1, 4, 10-12). No lease provided to Plaintiff ever indicated that it was for a rent stabilized apartment (id. at ¶¶ 10, 12). The last Division of

Housing and Community Renewal (“DHCR”) rent registration filed for the Apartment was in 2016 at a legal regulated rent of \$1643.04 per month to Thomas Harper, who was registered as a rent stabilized tenant (*id.* at ¶ 13). Landlord did not file DHCR rent registrations for 2017 or 2018 (NYSCEF Doc. 4).

Tenant/Plaintiff filed his Complaint on January 15, 2019 alleging that Landlord improperly and illegally treated Tenant as an unregulated tenant by failing to provide him with a rent regulated tenancy and seeks declaratory judgment stating that the Apartment is rent stabilized, an injunction directing Landlord to roll back rent for the Apartment pursuant to the DHCR default formula, a money judgment for rent overcharges illegally collected plus treble damages, and attorneys’ fees (NYSCEF Doc. 1).

On March 29, 2021, Landlord filed an Answer with a Counterclaim asserting that the Apartment was legally deregulated, and that Landlord is entitled to attorneys’ fees (NYSCEF Doc. 8). On April 22, 2019 Tenant filed a reply to Landlord’s Counterclaim stating that Landlord is not entitled to attorneys’ fees since the Lease does not contain a provision for the award of attorneys’ fees, nor is there any applicable statute to award Landlord attorneys’ fees (NYSCEF Doc. 9).

On September 1, 2021, Tenant filed a motion for summary judgment as to liability on Tenant’s causes of action seeking declaratory judgment, an injunction, and money judgment, and seeking referral for calculation of overcharges, resetting of legal regulated rent, and an assessment of attorneys’ fees (NYSCEF Doc. 10). Tenant argues that Landlord fraudulently treated the Apartment as exempt from regulation due to “high-rent deregulation” pursuant to RSL § 26-504.2[a]. Tenant claims that at the time he took possession of the Apartment, the deregulation threshold was \$2,700.00, but at the time the previous tenant, Thomas Harper, vacated the Apartment the legal regulated rent was \$1,643.04. Therefore, according to Tenant, the Apartment

does not meet the “high-rent deregulation” threshold and should still be rent-stabilized. Tenant also argues that because the Apartment’s rent history is incomplete because Landlord did not file a DHCR registration since 2017, and Landlord has violated RSC § 2522.6[d] by engaging in an illusory or collusive practice to deprive tenant of his or her rights under the rent stabilization code.

Landlord opposed Tenant’s motion and cross-moved to dismiss Tenant’s Complaint. Landlord argues that following the vacatur of Thomas Harper, the legal regulated rent was lawfully increased over \$2,700 through statutory post-vacancy increase and individual apartment improvements. Landlord also stated Tenant’s motion was procedurally defective as it is not supported by any proofs, does not contain an affidavit by someone with personal knowledge, and failed to attach all the pleadings. Landlord also argues that failing to file a “permanently exempt” exit registration statement with DHCR is merely a ministerial act intended for proper bookkeeping and not determinative of whether the Apartment was stabilized or not. Landlord argues that in the alternative the Court may dismiss this action and refer it to DHCR based upon the doctrine of primary jurisdiction.

Tenant responds that the doctrine of primary jurisdiction is not applicable because the 2019 Housing Stability and Tenant Protection Action (HSTPA) eliminated the primary jurisdiction argument in favor of a tenant’s right to choose the forum for the adjudication of a rent overcharge claim. Tenant also argues that failure to attach the pleadings is not a fatal defect where the pleadings are filed electronically, and that Landlord’s interpretation of the Rent Act of 2015 is incorrect, and Landlord’s evidence of improvements is deficient.

There has been no discovery exchanged. No preliminary conference has been held.

II. Discussion

A. Landlord's Motion to Dismiss

Landlord cross moves to dismiss Plaintiff's Complaint based upon the doctrine of primary jurisdiction. This argument is without merit, as the Court of Appeals has ruled that the provisions of the HSTPA expressly provides that a tenant may choose the forum upon which they wish to adjudicate alleged rent overcharge claims (*Collazo v Netherland Prop. Assets LLC*, 35 NY3d 987, 990 [2020]). In lieu of the HSTPA and Tenant's decision to adjudicate his alleged rent overcharge claim in Supreme Court, Landlord's motion to dismiss based on the primary jurisdiction doctrine is denied.

B. Tenant's Motion for Summary Judgment

i. Summary Judgment Standard

"Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact." (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party's "burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial. *See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Pemberton v New York City Tr. Auth.*, 304 AD2d 340, 342 [1st Dept 2003]). Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment (*see Banco Popular North Am. v Victory Taxi Mgt., Inc.*, 1 NY3d 381 [2004]).

ii. Procedural Defects

As a preliminary matter, Landlord opposes Tenant's motion for summary judgment on a variety of procedural grounds, including Tenant's motion failing to include an affidavit by someone with personal knowledge, the pleadings, or any exhibits. The Court finds that Tenant's failure to attach the pleadings when they were filed electronically to be harmless (*Studio A Showroom, LLC v Yoon*, 99 AD3d 632 [1st Dept 2012]). Moreover, Tenant attached a copy of the pleadings with their reply papers, and Landlord cannot claim it is prejudiced since copies of the pleadings are available on this case's electronic docket.

iii. Plaintiff's Prima Facie Showing

The Court finds that Tenant has not made prima facie showing of entitlement to judgment as a matter of law as there is insufficient evidence to eliminate material issues of fact. Tenant has not included any affidavit in support of his motion by anyone other than Tenant's counsel, and although Plaintiff's counsel states in her affidavit that "the facts relevant to this motion are undisputed" that assertion is untrue since Landlord denied in its Answer that Tenant's Apartment is rent-stabilized. Tenant also did not provide any evidence that eliminates other material issues of fact, such as whether valid IAI were made to the Apartment to take it out of regulation.

Although Tenant believes that its prima facie showing is reliant upon interpretation of the 2015 Rent Act, Tenant's interpretation is incorrect. Tenant believes that because the legal rent was not \$2700 at the time the previous tenant vacated the apartment, then the apartment must still be regulated. This contradicts the plain meaning of the statute at issue. RSL § 26-504.2[a], which created an exclusion for high rent accommodations states the exclusion shall apply for:

“Any housing accommodation with a legal regulated rent that was two thousand seven hundred dollars or more per month at any time on or after the effective date of the rent act of 2015 which becomes vacant after the effective date of the rent act of 2015.”

Therefore, Tenant’s reliance on an incorrect interpretation of RSL § 26-504.2[a] is not grounds to grant summary judgment since the plain meaning of the statute states deregulation can occur during a vacancy, and Landlord asserts the Apartment became deregulated during a vacancy where \$37,200 worth of IAI brought the Apartment within the applicable exception (326 Starr, LLC v Martinez, 74 Misc3d 77, 81-82 [App Term, 2d Dept, 2d, 11th, & 13th Jud Dists 2021]; (NYSCEF Documents 19-23)). Given the evidentiary dearth presented by Plaintiff in his motion for summary judgment, the fact that no discovery has been exchanged, and there has not even been a preliminary conference, the Court finds Plaintiff’s motion for summary judgment to be premature.

Accordingly, it is hereby

ORDERED that Tenant’s motion for summary judgment is denied in its entirety, without prejudice; and it is further

ORDERED that Landlord’s cross-motion to dismiss Tenant’s Complaint is denied with prejudice.

This constitutes the Decision and Order of this Court.

<u>8/5/2022</u> DATE					<u>Mary V Rosado</u> HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER	
	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE