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| <b>Haygood v Prince Holdings 2012, LLC</b>                                                                                                                                                                                     |
| 2022 NY Slip Op 32891(U)                                                                                                                                                                                                       |
| August 24, 2022                                                                                                                                                                                                                |
| Supreme Court, New York County                                                                                                                                                                                                 |
| Docket Number: Index No. 155091/2016                                                                                                                                                                                           |
| Judge: Alexander Tisch                                                                                                                                                                                                         |
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. ALEXANDER TISCHPART 18*Justice*

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JONATHAN HAYGOOD,

INDEX NO. 155091/2016

Plaintiff,

- v -

**DECISION AFTER TRIAL**

PRINCE HOLDINGS 2012, LLC; STEVEN CROMAN;  
HARRIET CROMAN a/k/a HARRIET KAHAN CROMAN;  
HARRIET KAHAN; OREN GOLDSTEIN; and JANETH  
DONOVAN.

Defendants.

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Plaintiff, a tenant of apartment B at 309 East 8th Street in the County, City and State of New York owned and managed by defendants, commenced this action on or about June 16, 2016 seeking a declaratory judgment that they are rent regulated tenants of the apartment and a judgment for alleged rent overcharges including statutory treble damages. The two remaining causes of action are for 1) rent overcharge and 2) breach of the implied warranty of habitability. The causes of action for violations of General Business Law (GBL) section 349 and New York City Consumer Protection Law 20-700 were dismissed earlier. Defendants served an answer on or about July 21, 2016.

A nonjury trial was conducted on November 18, 2019, January 10, 2020 and October 27, 2020 in front of Judge Carol Feinman. The parties stipulated on July 9, 2021 for the trial to be decided on the prior record by the undersigned (NYSCEF Doc. No. 145). Defendant Steven Croman was called to the stand on July 19, 2021 for additional testimony. The central issue of the trial is whether the defendants' claimed expenditures to renovate the apartment, after the previous tenants vacated it, are sufficient to bring the legal rent of the apartment above the luxury decontrol threshold, allowing defendants' to charge free market rent. At the 2019 and 2020 trial proceedings only Jonathan Haygood was called as

plaintiff witness. Sean O'Sullivan, Steven Yow and Steven Croman were called as witnesses for the defendants'.

As a preliminary matter, the Court dismisses claims against Steven Croman, Harriet Croman a/k/a Harriet Kahan Croman, Harriet Kahan and Oren Goldstein. Defendant Janeth Donovan was dismissed from the case earlier. Plaintiff failed to establish the existence of a lease or contract with these individuals nor present more than conclusory evidence to allow for the piercing of the corporate veil. See Matter of Morris v New York State Dept of Taxation & Fin., 82 NY2d 135 [1993].

Plaintiff rented the apartment in February 2015 pursuant to a market rate lease for a \$2,695 monthly rent. In February 2016 Plaintiff signed a one year extension with a \$2,775 monthly rent but was charged \$2,740 a month beginning in March 2016. Plaintiff vacated the apartment in February 2017. The last registered rent with DHCR for the apartment was for a \$533.82 monthly rent. The apartment was registered in 2015 as "exempt," "high rent vacancy."

Rent Stabilization Code (9 NYCRR) § 2520.11(r)(10)(i) permits rent increases for post vacancy individual apartment improvements (IAI). A vacancy increase can be included when calculating the legal rent when determining whether an apartment has met the deregulation threshold amount. See Altman v 285 W Fourth LLC, 31 NY3d 178 [2018]. It is ultimately the landlord's burden to prove entitlement to an IAI increase. See Matter of Ador Realty, LLC v Division of Hous & Community Renewal, 25 AD3d 128 [2d Dept 2005].

Judge Kathryn Freed granted partial summary judgment on the issue of liability rent overcharge (first cause of action) in a July 30, 2018 decision (NYSCEF Doc. No. 88). Her decision was affirmed on appeal (NYSCEF Doc. No. 123). RSC § 2524.4[a] states that an owner is barred from collecting "any rent in excess of the legal regulated rent in effect from on the date of the last preceding registration statement" if the owner failed to file proper and timely registrations. See also Jazilek v Abart Holdings,

LLC, 72 AD3d 529 [2010]. Further, a registration that does not accurately reflect a legal rent is not proper. See RSL § 26-517[e].

Based on the foregoing, plaintiff rent for his initial one year lease for the period February 2015 to March 2016 should have been the last registered rent of \$533.82. Moreover, there is no credible evidence that the defendants properly registered the apartment with DHCR since 2014 so the freeze remains in effect. See Grady v Hessert Realt, LP, 178 AD3d 401 [1st Dept 2019]. The plaintiff's are entitled to the overcharge amount of \$2,695 minus \$533.82, which is \$2,161.18 a month. Plaintiff's were offered a renewal lease of \$2,775 a month, which is a \$2,241.18 a month overcharge once the \$533.82 last registered rent is subtracted. However, beginning in March 2016 plaintiff was charged \$2,740 a month, which is a \$2,206.18 a month overcharge once the \$533.82 last registered rent is subtracted. \$2,161.18 a month for twelve months is \$25,934.16 plus \$2,241.18 for February 2016 and \$2,206.18 a month for eleven months through January 2017 is \$24,267.98. Plaintiff vacated the apartment in February 2017.<sup>1</sup>

Plaintiff failed to prove his second cause of action for breach of the warranty of habitability. Plaintiff testified to minimal issues concerning disrepair. No proof was provided of notice to defendants, access provided to defendants or duration of the alleged conditions.

Plaintiff seeks treble damages on a finding that defendants deregulation was willful. The Court finds that defendants have not overcome the presumption of willfulness by failing to demonstrate a good faith and reasonable belief by the preponderance of the evidence that the overcharge was permissible. See Myers v D'Agosta, 202 AD2d 223 [1st Dept 1994]. Defendants established, through the testimony of Steven Croman, that renovations were done and that expenditures were made for such improvements to three apartments in the building, including the apartment at issue. However, defendants were unable

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<sup>1</sup> The rent freeze may be lifted prospectively upon the filing of a re-registration with DHRC reflecting the proper rent. See Matter of Cardona v New York State Div of House & Community Renewal, 214 AD2d 393 [1st Dept 1995].

to establish the exact amount of expenditures for the improvements to the apartment at issue, which is why the Court concluded that the apartment was not properly deregulated. Moreover, the Court finds that defendant witness Steven Croman was not credible in his July 19, 2021 testimony. Defendants are sophisticated property managers and owners that should know how to properly account for improvements in their properties, particularly when such improvements could lead to a financial windfall. See Matter of Obiora v New York State Div. of Hous. & Community Renewal, 77 AD3d 755 [2d Dept 2010].

The Court denies the defendant's counter-claim and remaining affirmative defenses. The Court has considered the remaining arguments raised by the parties and finds them unavailing.

It is hereby ORDERED that the complaint is dismissed insofar as asserted against all defendants except Prince Holdings 2012 LLC, and the Clerk is directed to enter judgment in favor of those defendants, dismissing the complaint; and it is further

ORDERED that the second cause of action insofar as asserted against Prince Holdings 2012 LLC is dismissed; and it is further

ORDERED that judgment in favor of the plaintiff is granted on his first cause of action; and it is further

ORDERED, ADJUDGED and DECLARED that Apartment B at 309 East 8th Street, New York, New York is a rent-stabilized apartment with a legal rent of \$533.82 per month; and it is further

ORDERED and ADJUDGED that defendant Prince Holdings LLC shall register the unit with the DHCR with the legal rent of \$533.82 per month within 30 days of after service of a copy of this decision and order with notice of entry; and it is further

ORDERED that the Clerk is directed to enter a monetary judgment in favor of the plaintiff against defendant Prince Holdings 2012 LLC in the amount of \$52,443.32 representing the rent overcharges; and it is further

ORDERED that the Clerk is directed to enter a monetary judgment in favor of the plaintiff against defendant Prince Holdings 2012 LLC in the amount of \$157,329.96 representing treble damages;<sup>2</sup> and it is further

ORDERED that counsel for the plaintiffs shall, within 30 days from the date of this order, serve a copy of this order with notice of entry upon the General Clerk's Office (Room 119).

This shall constitute the decision and order of this Court.



DATE: 8/24/2022

ALEXANDER TISCH, JSC

Check One:

☒

Case Disposed

☐

Non-Final Disposition

Check if Appropriate:

☐

Other (Specify \_\_\_\_\_)

<sup>2</sup> No interest is awarded because interest is generally authorized from the date of the initial monthly overpayment, except when treble damages are warranted. See Mohassel v Fenwick, 5 NY3d 44 [2005].