

Daniels v RH 528 W. 159 St. LP
2022 NY Slip Op 33344(U)
October 3, 2022
Supreme Court, New York County
Docket Number: Index No. 152925/2017
Judge: Lori S. Sattler
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LORI S. SATTLER PART 02TR

Justice

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AMIRAH DANIELS, EMOC DAILEY, ETAN HARWAYNE,
NICHOLAS GLIMENAKIS, ORIANA MCGEE, PATRICIA
MCKEON, ALEXANDRA JARAMILLO, GEORDANO
GOMEZ, AMIRA AGANOVIC,

Plaintiff,

- v -

RH 528 WEST 159 STREET LP, RH 530 WEST 159
STREET LP, RH 532 WEST 159 STREET LP, RH 534
WEST 159 STREET LP, RH 536-538 WEST 159 STREET
LP, RHODIUM FC LP, RH MANAGEMENT SERVICES
LLC, MARK SILBER, JONATHAN RAMIREZ, CVRE 528-538
WEST 159 ST. LLC, CHAIM NORTMAN, BSD
MANAGEMENT LLC, FRANK ORTIZ, ADRIANA SALAZAR,
CHARLES GLATTER, ILENE BUTLER, 528-538 159TH
STREET, LLC, DAVID SPEISER

Defendant.

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INDEX NO. 152925/2017
MOTION DATE N/A
MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 115, 116, 117, 118, 119, 120, 121, 122, 123, 124

were read on this motion to/for MODIFY

In this action alleging rent overcharge and breach of the warranty of habitability;
defendants Mark Silber; Jonathan Ramirez; Rhodium FC LP; RH Management Services, LLC;
RH 528 West 159th St LP; RH 530 West 159th Street LP; RH 532 West 159th Street, LP; RH
534 West 159th Street LP; and RH 536-538 West 159th Street LP ("Moving Defendants") move
for an order modifying the July 11, 2017 stipulation regarding rent owed by certain plaintiffs
(NYSCEF Doc. No. 32, "Rent Stipulation"). Plaintiffs, who are current and former tenants of
buildings owned by defendants, oppose the motion.

Plaintiffs commenced this action in March 2017. Plaintiffs claim that the defendants
have engaged in rent overcharges and breached the warranty of habitability due to conditions of
disrepair throughout the subject buildings and Plaintiffs' apartments.

On July 11, 2017, the parties executed the Rent Stipulation. According to Moving Defendants, Plaintiff Amirah Daniels commenced an action with the Division of Housing and Community Renewal (“DHCR”) prior to the execution of the Rent Stipulation. The Rent Stipulation provides, in relevant part, that Plaintiffs will pay certain rental amounts “[d]uring the pendency of litigation” (Rent Stipulation ¶ 5). The Rent Stipulation further states “[w]ithout admitt[ing] the legality of these rents, [Moving Defendants] will accept the same without prejudice as to their claims, and without incurring future treble damages during the pendency of the above captioned litigation” (*id.* ¶ 6).

In a decision dated April 27, 2018 (Freed, J.), the Court dismissed Plaintiff’s rent overcharge causes of action and referred those claims to the DHCR (NYSCEF Doc. No. 75). In its decision, the Court further ordered this action stayed pending the DHCR’s determination of rent regulation issues while also ordering that the Court retained jurisdiction to determine all issues not decided by the DHCR (*id.*). It appears that the remaining Plaintiffs all filed DHCR overcharge actions.

In a so-ordered stipulation signed by counsel dated February 26, 2019, after the DHCR complaints were filed, the parties agreed that “the rent stipulation [between Moving Defendants and Plaintiffs] remains in effect and is enforceable” (NYSCEF Doc. No. 104). That stipulation further provided for various conditions to be addressed by Defendants. On May 20, 2021, the DHCR issued an order denying the rent overcharge complaint of Plaintiff Emoc Dailey (NYSCEF Doc. No. 117). According to the Moving Defendants, Amirah Daniels’s DHCR overcharge complaint was also denied, and no decision has been issued with respect to the rent overcharge complaints of the remaining Plaintiffs (NYSCEF Doc. No. 116 ¶ 14).

The Moving Defendants now ask the Court to modify the Rent Stipulation “to reflect that the agreed upon rental amount to [be] paid and accepted during the pendency of this litigation

ends when a decision on the legal rent for each subject apartment is rendered by the [DHCR]” (NYSCEF Doc. No. 115). They argue that the Rent Stipulation should be modified because, at the time the Rent Stipulation was executed, the parties did not contemplate that the Court would dismiss the rent overcharge claims and refer them to the DHCR as it did in its decision of April 27, 2018.

In opposition, Plaintiffs argue that the Rent Stipulation clearly states that it “endures for the duration of the instant proceeding” (NYSCEF Doc. No. 119 ¶ 5). They further maintain that the Rent Stipulation should remain in force because the warranty of habitability claims are still before the Court and have yet to be litigated. Plaintiffs assert that the alleged disrepair of the apartments and buildings have not been remedied despite Defendants’ agreement to do so, including in the February 26, 2019 so-ordered stipulation (*id.* ¶¶ 6-9).

The motion is denied. The Court has “repeatedly held that, unless public policy is affronted, parties to a civil dispute are free to chart their own litigation course” (*Chester Music Ltd. v Schott Musik Int’l GmbH & Co. (In re Estate of Stravinsky)*, 4 AD3d 75, 81 [1st Dept 2003], quoting *Mitchell v New York Hospital*, 61 NY2d 208, 214 [1984] [internal quotation marks omitted]). “A valid stipulation . . . should be construed as an independent contract subject to the well-settled principles of contractual interpretation” (*Chester Music Ltd.*, 4 AD3d at 81 [1st Dept 2003]). “The words and phrases used by the parties [to a contract] must . . . be given their plain meaning” (*Ellington v EMI Music, Inc.*, 24 NY3d 239, 244 [internal citations and quotation marks omitted]). By the plain language of its terms, the Rent Stipulation provides that rent was owed to and would be accepted by the Moving Defendants “during the pendency of” the present action (Rent Stipulation ¶¶ 5-6). It is undisputed that this action continues, and that Plaintiffs’ claim that their concerns regarding conditions in the respective apartments has not

been addressed. Thus, the Moving Defendants fail to set forth a sufficient basis to set aside the parties' stipulation.

The Court further finds Moving Defendants' argument regarding the failure to contemplate the DHCR proceedings to be unpersuasive given the fact that those actions were commenced prior to the parties' February 26, 2019 so-ordered stipulation, in which the parties agreed to continue the Rent Stipulation.

Accordingly, for the reasons set forth above, it is hereby:

ORDERED that the motion is denied.

10/3/2022

DATE



LORI S. SATTLER, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE