SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ALEXANDER M. TISCH** **PART** **18**

Justice

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ANLLY MARTINEZ AND DUANE GUMBS,

Plaintiffs,

- v -

WHGA RENAISSANCE APARTMENTS LIMITED PARTNERSHIP, WEST HARLEM GROUP ASSISTANCE, INCORPORATED,

Defendants.

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INDEX NO. 154629/2021

MOTION DATE 11/17/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 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

were read on this motion to/for Dismiss and Cross-Motion for Summary Judgement.

Upon the foregoing documents, defendants move to dismiss, with prejudice, plaintiffs' cause of action pursuant to CPLR 3211 (a)(4), (a)(5), CPLR 327 (a), CPLR 213-a, and RSL § 26-516 (a)(2). Plaintiffs cross-move in opposition to deny defendants' motion to dismiss, and for summary judgment pursuant to CPLR 3212.

BACKGROUND

Plaintiffs are rent stabilized tenants of the apartment known and located at 434 Saint Nicholas Avenue, Apt. 4A, New York, NY 10027 ("subject apartment'), and have resided at the subject apartment since May 1, 2008, approximately (NYSCEF Doc. No. 15, ¶ 4). According to plaintiffs, their initial rent was $1,151.00 with a preferential rent of $748.58 from April 2019 to March 2020 (NYSCEF Doc. No. 15, ¶ 5). On December 1, 2010, the DHCR issued a Rent Order setting the collectible rent for the subject apartment at $430.00/month, pursuant to a Regulatory Agreement dated December 15, 2005 (NYSCEF Doc. No. 15, ¶ 8). Plaintiffs allege that the defendants failed to disclose the maximum collectible rent for the subject premises, and

intentionally and continuously overcharged plaintiffs for rent (NYSCEF Doc. No. 15, ¶ 9). Due to such, plaintiffs filed two complaints with the DHCR in February of 2021, to resolve the rent overcharge issue and defendants' failure to provide a rent stabilized renewal lease after the lease expired in March of 2020 (NYSCEF Doc. No. 15, ¶ 11).

Defendants argue that dismissal is required as a matter of law because plaintiffs have filed identical claims with DHCR and this Court. Furthermore, defendants argue that plaintiffs' claims regarding the rent overcharge issue are barred by the statute of limitations, which also requires dismissal. In opposition, plaintiffs argue that defendant's motion to dismiss should be denied because plaintiffs have properly selected this Court to adjudicate the rent overcharge issue, and that identical actions are no longer pending in separate courts. Moreover, plaintiffs argue that they filed their claims within the applicable statute of limitations, which precludes dismissal. Plaintiffs also argue that they are entitled to summary judgment because defendants do not deny that they overcharged plaintiffs for rent.

ARGUMENT

Motion to Dismiss

Identical Actions

CPLR 3211 (a)(4) entitles a party to "move for judgment dismissing one or more causes of action…on the ground that there is another action pending between the same parties for the same cause of action in a court of any state or the United States" (CPLR 3211). "The doctrine of forum non conveniens permits a court to dismiss an action otherwise jurisdictionally sound if it finds 'in the interest of substantial justice the action should be heard in another forum'" (Fekah v Baker Hughes Inc., 176 AD3d 527, 528–29 [1st Dept 2019] quoting CPLR 327). "New York courts generally follow the first-in-time-rule, which instructs that 'the court which has first taken

jurisdiction is the one in which the matter should be determined and it is a violation of the rules of comity to interfere'" (XL Specialty Ins. Co. v AR Cap., 181 AD3d 546 [1st Dept 2020] quoting City Trade & Indus., Ltd. v New Cent. Jute Mills Co., 25 NY2d 49, 58 [1969]). "However, 'chronology is not dispositive,' especially [when the action is in]...the early stages of litigation or filed in close proximity" (Id. quoting IRX Therapeutics, Inc. v Landry, 150 AD3d 446, 447 [1st Dept 2017]).

Defendants argue that this action should be dismissed because plaintiffs have filed two actions for identical relief before DHCR that remain pending. Defendants further argue that the Court of Appeals has determined that plaintiffs' initial choice of forum dictates that plaintiffs' claims be heard before the DHCR, because plaintiffs' initial forum of choice controls. Plaintiffs argue in opposition that pursuant to the Housing Stability and Tenant Protection Act of 2019, a rent overcharge complaint may be filed with the DHCR or in a competent court of jurisdiction at any time. And most notably, plaintiffs maintain that they have withdrew the DHCR complaint pertaining to the rent overcharge issue by letter dated March 31, 2021 and initiated this action on May 12, 2021, thereby eliminating the issue presented within CPLR 3211 (a) (4).

As held by the Court of Appeals in Collazo v Netherland Prop. Assets LLC, 35 NY3d 987, 990 [2020], a "plaintiffs' choice of forum controls", and given the change of circumstances - plaintiffs withdrawing their complaint before DHCR - the issue regarding the rent overcharge claim and whether it is properly before this Court is now moot, as there are no longer identical claims pending in different bodies (see Weeks Woodlands Ass'n, Inc. v Dormitory Auth. of State, 95 AD3d 747, 753 [2012] quoting Gabriel v Prime, 30 AD3d 955, 956 [2006] ["mootness is an issue that can be raised at anytime and, in fact, it is incumbent upon counsel to inform the court of changed circumstances which render a matter moot"]). For plaintiffs affirm that they requested

that DHCR withdraw their complaint regarding the rent overcharge issue on March 31, 2021, and in good faith initiated this action before this Court on May 12, 2021 (NYSCEF Doc. No. 15, ¶¶ 12, 13). Had it not been for the extensive backlog within the DHCR online case status tool, the Court assumes the withdrawn status of the complaint would have been generated sooner (NYSCEF Doc. No. 15, ¶¶ 15). Nonetheless, this Court can confirm that the complaint was withdrawn and has been inactive within DHCR as of November 23, 2021 (DHCR Case Status Inquiry https://apps.hcr.ny.gov/casestatus/default.aspx). Accordingly, the Court denies defendants request to dismiss pursuant to CPLR 3211 (a) (4) and CPLR 327 (a).

Time Barred Claims

> The "Housing Stability and Tenant Protection Act of 2019 (HSTPA), [made] sweeping changes to the RSL…Part F of the HSTPA includes amendments that, among other things, extend the statute of limitations, alter the method for determining legal regulated rent for overcharge purposes and substantially expand the nature and scope of owner liability in rent overcharge cases" (Regina Metro. Co., LLC v New York State Div. of Hous. & Cmty. Renewal, 35 NY3d 332, 349 [2020]).

"However, the Court of Appeals has determined that the HSTPA, which requires that the entire rent history be examined, cannot be retroactively applied to overcharges alleged to have occurred before the HSTPA's enactment in 2019" (435 Cent. Park W. Tenant Ass'n v Park Front Apartments, LLC, 183 AD3d 509, 509 [2020]). Plaintiffs allege rent overcharges dating back to 2010, meaning "the overcharge calculation amendments [of the HSTPA]" will not be applied to plaintiffs' claims (Regina Metro. Co., LLC v New York State Div. of Hous. & Cmty. Renewal, 35 NY3d 332, 363 [2020]). Applying pre-HSTPA law to plaintiffs' overcharge claims, which is required, enables "a four-year statute of limitations and lookback period" from the date of initiation of the claim (435 Cent. Park W. Tenant Ass'n v Park Front Apartments, LLC, at 510). See also CPLR. 213-a

> "No overcharge penalties or damages may be awarded for a period more than [four] years before the action is commenced or complaint is filed, however, an overcharge claim may be filed at any time, and the calculation and determination of the legal rent and the amount of the overcharge shall be made in accordance with the provisions of law governing the determination and calculation of overcharges" (CPLR. 213-a).

Defendants argue that plaintiffs' claims should be dismissed because they are barred by the applicable statute of limitations. According to defendants, the statutory language prior to the HSTPA prohibited any rent overcharge damages that occurred more than four years prior to the filing of the claim. Plaintiffs argue in opposition that they have filed the complaint within the statute of limitations because an action based on fraud must be commenced within six years of discovering the rent overcharge, and that they have complied with this requirement.

According to CPLR 213-a, overcharge claims may be filed at any time, and penalties and damages may not be awarded for a period more than four years before the action is commenced. Since an overcharge claim may be filed at any time, plaintiffs' claims are timely. The only question is whether plaintiff is afforded the look back period of four or six years, as fraud claims are allotted a look back period of six years. (See Regina Metro. Co., LLC v New York State Div. of Hous. & Cmty. Renewal, 35 NY3d 332, 361 [2020] ["We therefore decline to create a new exception to the lookback rule and instead clarify that, under pre-HSTPA law, the four-year lookback rule…govern in [] overcharge cases, absent fraud"]). Accordingly, the Court finds that plaintiffs' claims are timely and are not barred by the applicable statute of limitations.

Summary Judgment

"CPLR 3212(b) requires the proponent of a motion for summary judgment to demonstrate the absence of genuine issues of material fact on every relevant issue raised by the pleadings, including any affirmative defenses" (GMAC Mortg., LLC v Winsome Coombs, 191 AD3d 37, 50 [2020]). Plaintiffs argue that they are entitled to summary judgment because the defendants fail to

refute that they disregarded the DHCR rent order that set the rent for the subject premises at $430.00/month and continued to charge plaintiffs a higher amount. Defendants argue in opposition that the motion is premature and that plaintiffs fail to provide substantive support that dispels any question of fact.

The Court denies plaintiffs' motion for summary judgment as premature because issue has not been joined (see CPLR 3212 [a]).

CONCLUSION

Accordingly, it is hereby ORDERED that defendants' motion to dismiss is denied in its entirety; and it is further

ORDERED that plaintiffs' cross-motion for summary judgment is denied; and it is further

ORDERED that defendants shall file and serve an answer to the complaint within twenty (20) days from service of this order with notice of entry.[1]

This constitutes the decision and order of the Court.

3/21/2023
DATE

ALEXANDER M. TISCH, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE

[1] After issue is joined, the parties should request a preliminary conference on NYSCEF and notify SFC-Part18-Clerk@nycourts.gov of the same.