

**Bushwick Holdings Group, LLC v New York City
Dept. of Hous. Preserv. & Dev.**

2023 NY Slip Op 32317(U)

July 10, 2023

Supreme Court, New York County

Docket Number: Index No. 161005/2022

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH **PART** **14**

Justice

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BUSHWICK HOLDINGS GROUP, LLC,

Plaintiff,

INDEX NO. 161005/2022

MOTION DATE 07/05/2023

MOTION SEQ. NO. 002

- v -

NEW YORK CITY DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion to/for DISMISS.

Defendant’s motion to dismiss is granted.

Background

The instant dispute arises out of a previous Article 78 proceeding in which plaintiff sought to annul a determination revoking tax exemptions provided for under the Real Property Tax Law § 421-a program. This initial proceeding (Index Number 100140/2019) ended in a settlement (NYSCEF Doc. No. 25).

However, plaintiff then made multiple motions related to the settlement, including a motion to reinstate its right to the tax benefits and to set aside the settlement as unconscionable (see NYSCEF Doc. No. 28 in Index Number 100140/2019). The judge assigned to the proceeding denied both motions and observed (with respect to the second motion to vacate) that plaintiff had to commence a plenary action to vacate the settlement.

Plaintiff then commenced this action for a declaration that it “affirmatively elected to not register all rental units at the 1357 Decatur Street property with the New York State Division of Housing Community and Renewal (“DHCR”) for the years of 2016, 2017 and 2018 as required by Paragraph “4” of the Stipulation. The net effect of plaintiff’s actions should be limited to the non-reinstatement of its Section 421-a tax exemption benefits” (NYSCEF Doc. No. 18 at 5 [Amended Complaint]).

Plaintiff asserts that “By opting to not take advantage of the potential benefits of the Stipulation, Plaintiff elected to not register all rental units with the understanding that the net penalty or consequences for said action would be limited to plaintiff not having its Section 421-a tax exemption benefits be reinstated” (*id.* ¶ 20).

Defendant now moves to dismiss the amended complaint. It observes that plaintiff’s subsequent registration filings with the DHCR reflected rental amounts that exceeded those approved by HPD and that contravened the terms of the stipulation that settled the Article 78 proceeding. It argues that state law requires that the rental units must remain subject to rent stabilization, including annual registrations with DHCR, even if the building is no longer receiving the tax benefits.

Defendant points out that plaintiff initially failed to register its units with DHCR for 2016-2018, which led to the revocation of plaintiff’s tax benefits and the previous Article 78 proceeding. It claims that plaintiff demands a declaration that makes the only consequence of not registering its units a continued revocation of the tax benefits. Defendant maintains that this result contradicts the applicable statutes and the stipulation into which the parties entered.

In opposition, plaintiff insists that defendant is mischaracterizing what it is seeking in this matter. Plaintiff argues that paragraph 13 of the stipulation would artificially constrain plaintiff’s

ability to legally increase rents. It complains that the tax benefits were set to expire in July 2023 and the additional 25-year period contained in the settlement is not contemplated by law.

Plaintiff alleges that it does not have to register units as required under paragraph 4 of the settlement and that the term for rent stabilization should not run for 25 years.

Discussion

The Court grants the motion. Although plaintiff cites reasons for why certain provisions of the settlement are not provided for in the applicable law, the fact is that the plaintiff does not dispute that it entered into this settlement agreement. This agreement requires that “Within fourteen (14) days of the execution of this Stipulation, Petitioner must register all rental units at the 1357 Decatur Street property with the New York State Division of Housing Community and Renewal (“DHCR”) for the years of 2016, 2017 and 2018” (NYSCEF Doc. No. 25, ¶ 4).

It also provides that “Notwithstanding any other provision of the 421-a law applicable to the rent stabilization period that a 421-a rental unit must remain rent stabilized; Petitioner shall comply with the Rent Stabilization Law and each unit in the subject property will remain rent stabilized for twenty-five (25) years from the date of this Stipulation. Petitioner also agrees to complete and submit any DHCR form that DHCR may require that relates to the length of the rent stabilization period as provided in this Stipulation for the subject property as part of their rent registration with DHCR” (*id.* ¶ 13).

In other words, the amended complaint seeks declaratory relief that plaintiff can ignore the terms of this stipulation. The Court sees no reason to modify this agreement because plaintiff does not now want to follow its terms. In fact, plaintiff already unsuccessfully sought relief with respect to this settlement before the judge assigned to hear the Article 78 proceeding. Plaintiff’s argument is basically that because it has chosen not to follow the terms of the stipulation to

regain the subject tax benefits, it should be entitled to ignore the other obligations and requirements of the settlement. It just doesn't work that way. There is no basis to grant such relief and it does not state a cognizable cause of action.

Moreover, as defendant points out, the applicable statutory provision states that “The Revocation of a Tax Benefit pursuant to this chapter shall not exempt any housing accommodations in the applicable Property from continued compliance with the requirements of the Law pursuant to which such Tax Benefit was granted, including, but not limited to, any provision of such Law regarding rent control or rent stabilization. Such housing accommodations shall be operated in compliance with such requirements of such Law until the Expiration Date or for such longer period as may be specified by Law” (28 RCNY § 39-03).

And there is no question that the 421-a program under which this dispute arose states that:

“Failure to comply with the provisions of this section which require the creation and maintenance of affordable units pursuant to this section, or units which are required to be occupied by persons or families who meet specified income limits pursuant to the provisions of a local law enacted pursuant to this section, at any time during the duration of the building's tax exemption shall result in revocation of any benefits under this section for the period of such non-compliance. If an on-going pattern of non-compliance is found to exist, such benefits may be revoked from their inception. *Notwithstanding the revocation of benefits for a building pursuant to the provisions of this subdivision, all units in such building shall continue to remain subject to the provisions of the rent stabilization law for the entire intended period as if the benefits had not been revoked*” (Real Property and Tax Law § 421-a[10][b] [*emphasis added*]).

That means that plaintiff has to comply with the applicable rules and regulations in accordance with the expiration date it agreed to in the settlement. If plaintiff wanted to have the applicable period run until the end of the tax benefit period, then it should not have agreed to the 25-year term described above. This Court cannot modify the settlement on these papers.

Plaintiff's requested relief in the amended complaint asks, essentially, for this Court to add a

term to the parties' settlement that if plaintiff changes its mind, then it can just walk away from the settlement. Unfortunately, the settlement does not contemplate such a situation. And the law says that once you get the tax benefits, the units are rent stabilized, even if the tax benefits are revoked. The Court cannot grant that relief and the complaint does not state valid basis for declaratory relief.

Accordingly, it is hereby

ORDERED that defendant's motion to dismiss is granted.

7/10/2023

DATE



ARLENE P. BLUTH, 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