

Triad Capital, LLC v Patino

2023 NY Slip Op 32589(U)

July 26, 2023

Supreme Court, New York County

Docket Number: Index No. 153186/2023

Judge: Arthur F. Engoron

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART 37

Justice

-----X INDEX NO. 153186/2023
MOTION DATE 04/07/2023
MOTION SEQ. NO. 001

TRIAD CAPITAL, LLC,

Petitioner,

- v -

GUILLERMO PATINO AS CHAIRPERSON OF THE NYC LOFT BOARD,

Respondent.

DECISION + ORDER ON MOTION

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49

were read on this motion for ARTICLE 78 RELIEF

Upon the foregoing documents, after oral argument on July 13, 2023, and for the reasons stated hereinbelow, the petition is denied.

Background

This CPLR Article 78 special proceeding, pursuant to Article 7-C of the Multiple Dwelling Law ("MDL"), arises out of a dispute over the rent-regulation status of two apartments in an interim multiple dwelling loft building located at 13 East 17th Street, New York, New York, 10003 (the "Building"). NYSCEF Doc. No. 1.

On or about April 20, 2006, the New York City Loft Board (the "Loft Board") issued Order No. 3041 (the "Harassment Order"), finding that the Building's then-landlord (the "Former Landlord"), a non-party to this proceeding, harassed its tenants on the fifth, seventh, eighth, and ninth floors, by failing to maintain amenities and to conduct repairs in an effort to compel those tenants to vacate their apartments and/or waive their Article 7-C rights. NYSCEF Doc. No. 11. The Harassment Order further barred Former Landlord from requesting its termination for at least three years. Id.

On or about March 21, 2007, petitioner, Triad Capital ("Triad"), purchased the Building in an arms-length transaction and began repairs to cure the defects set forth in the Harassment Order. NYSCEF Doc. Nos. 32, 10.

By stipulation dated July 30, 2007 (the "Jawitz Stipulation"), Triad purchased certain rights and fixtures from the tenants living in the Building's eighth-ninth floor units (the "Jawitz Unit"), pursuant to MDL § 286(12). NYSCEF Doc. No. 13. The Jawitz Stipulation provided that its tenants waived all claims of injury raised in separate tenant-landlord court actions, including a

case that Dorfman and Jawitz brought in the Housing Part of the Civil Court of the City of New York captioned Dorfman and Jawitz v Helmsley Speer, Index No. HP 6094/07. Id.

By stipulation dated December 3, 2007 (the “Dorfman Stipulation”), Triad purchased certain rights and fixtures from the tenants living in the Building’s fifth floor unit (the “Dorfman Unit”), pursuant to MDL § 286(12). NYSCEF Doc. No. 14. The Dorfman Stipulation provided that its tenants waived their claims raised in the same cases as the Jawitz Stipulation and consented to a vacatur of the Harassment Order. Id. at ¶ 13.

On September 7, 2007, Triad filed the Jawitz Stipulation and its Sales Record with the Loft Board. NYSCEF Doc. No. 7.

On February 2, 2011, Triad filed the Dorfman Stipulation and its Sales Record with the Loft Board. NYSCEF Doc. No. 7.

By correspondence dated March 7, 2011, the Loft Board informed Triad that the Jawitz and Dorfman Stipulations did not deregulate the two units, because they were executed while the Harassment Order was still in effect. NYSCEF Doc. No. 7. The Loft Board also noted that Triad had not yet filed its own application to terminate the order. Id. Triad had forty-five days to appeal the determination. Id. Triad did not file an appeal within that time period. Id.

On April 28, 2011, Triad filed an application for termination of the Harassment Order. NYSCEF Doc. No. 15. On April 18, 2013, the Loft Board issued Order No. 4081 granting Triad’s application and terminating the Harassment Order. Id.

On October 26, 2018, Triad filed an application to remove the Building from the Loft Board’s jurisdiction. NYSCEF Doc. No. 29.

On January 16, 2020, the Loft Board issued Order No. 4938, directing Triad to file the apartments with the Division of Housing and Community Renewal (“DHCR”) as rent-stabilized units pursuant to Article 7-C of the MDL. NYSCEF Doc. No. 29. Triad, in turn, filed a reconsideration application and, on May 19, 2022, the Loft Board issued Order No. 5124 affirming the January 2020 order. NYSCEF Doc. No. 30.

On June 22, 2023, Triad commenced this Article 78 proceeding, seeking to annul the 2020 and the 2022 orders issued by the Loft Board. NYSCEF Doc 1.

Triad argues that the Loft Board made an error of law when it found that Dorfman and Jawitz Stipulations did not deregulate the two units. Triad contends that as the Loft Board apparently did not file the Harassment Order with the Office of the City Register (“City Register”), pursuant to 29 RCNY § 2-02(d)(1)(iii), it does not bind Triad, particularly as Triad did not harass tenants. Id. Accordingly, Triad argues that the Jawitz and Dorman Stipulations were executed while there was no Harassment Order in effect, and the two units can be deregulated. NYSCEF Doc. No. 1.

In opposition, the Loft Board demonstrated that Triad had notice of the Harassment Order as Triad referenced harassment-related proceedings in the Jawitz and Dorfman Stipulations. The Loft Board also argues that Triad failed to avail itself of options to deregulate the apartments prior to purchasing the rights and sale of the improvements of the subject units, by seeking to terminate the order or waiting for it to terminate naturally.

In reply, Triad relies entirely on the plain language of 29 RCNY § 2-02(d)(1)(iii), which at the time stated that “notice of such order shall be filed by the Loft Board in the office of the City Register,” to argue that the Loft Board’s reasoning and interpretation of the Loft Law, defined *infra*, was arbitrary and capricious. NYSCEF Doc. No. 48.

Relevant Law

In a CPLR Article 78 proceeding, the scope of judicial review is limited to the issue of whether the administrative action is essentially, rationally based. Matter of Pell v Board of Educ., 34 NY2d 222, 230-31 (1974). It is well settled that “a court may not substitute its judgment for that of the board or body it reviews unless the decision under review is arbitrary and unreasonable and constitutes an abuse of discretion.” Id. at 232 (internal citation omitted).

Where “uncertainty as to legislative intent is manifest, the administrative agency’s interpretation of the statute under which it functions will be accorded deference by the courts.” Matter of Lower Manhattan Loft Tenants 157 A.D.2d 611 (1st Dept 1990).

In 1982, the New York State Legislature enacted Article 7-C of the Multiple Dwelling Law, after finding that government intervention was necessary to ensure compliance with minimum housing standards in the conversion of commercial and manufacturing loft buildings into residential lofts. MDL § 280. Recognizing that minimum standards for health, safety, and fire protection is necessary for the quality of housing, Article 7-C established a system of reasonable rent adjustments to ensure that loft tenants could pay for the costs of legalization without being displaced. Id.

The “Loft Law,” 29 RCNY §§ 1-01 et seq., 2-01 et seq., sets forth the statutory regulations governing interim multiple dwellings (“Lofts”) in New York City. Unless residential Loft tenants sell their Article 7-C rights to their landlord, the protections afforded to them by the Loft Law cannot be waived. MDL § 286(12). However, if there is a finding that a harassment order against a landlord, or their predecessor, is still in effect, a Loft tenant’s sale of rights pursuant to MDL § 286(12) “does not relieve the owner of the requirements of Article 7-C, including rent regulation, and the owner may not convert the unit to non-residential use.” 29 RCNY § 2-02(d)(i).

Pursuant to 29 RCNY § 2-02(d)(1)(iii), the Loft Board “shall file a Notice of Harassment Finding” with the City Register, a division within the NYC Department of Finance that records and maintains all official documents and property records.

Discussion

As an initial matter, the death of the seventh floor's tenant deregulated that unit. The only issue remaining is whether the Harassment Order was binding on the subject units when the Dorfman and Jawitz Stipulations were executed.

Petitioner asserts that the Loft Board intentionally failed to comply with a statutory regulation by not filing the Harassment Order with the City Register. Absent any evidence of bad faith on the Loft Board's part to support petitioner's allegation, however, this Court finds this argument speculative.

Here, the Loft Board acted neither arbitrarily nor capriciously when it issued Orders 4938 and 5124, finding that the Harassment Order bound Triad, whether or not the City filed notice. Triad's argument that the filing of the Harassment Order was a condition precedent to enforcing the requirements of the Loft Law is unavailing, as the rules governing the City Register support the Loft's Board's assertion that filings with the City Register are not intended to be the sole, actual notice to a property owner of any property-related document. The Rules Relating to the Office of the City Register, effective July 12, 2010, clearly state that any failure to receive notice from the city register "shall not invalidate any proceedings or filings with respect to the affected property." 19 RCNY § 43-02. Further, "[n]othing in this section shall be construed to create an enforceable right in any individual to receive the notice described in this section." Id.

Additionally, the First Department has, in an analogous case, held that an administrative agency's filing requirement with the City Register is irrelevant if the petitioner had constructive notice of an unrecorded document pre-purchase. 7 Vestry LLC, et al. v Dept. of Fin. of City of New York, 22 AD3d 174, 184 (1st Dept 2005) ("It has long been the rule that a purchaser with prepurchase notice, actual or constructive, of an unrecorded instrument or encumbrance is not a good faith purchaser for value and cannot avail himself or herself of the benefits of the recording statutes").

Moreover, the Loft Board demonstrated that Triad had actual notice of the Harassment Order, as Triad noted in its Reconsideration Application specifically that, after purchasing the Building, it worked to cure "exact areas of defects as indicated in the order of harassment." NYSCEF Doc. No. 41. Further, as a party to the Dorfman and Jawitz Stipulations, Triad knew of the Building's active landlord-tenant proceedings.

Accordingly, as the filing of the Harassment Order was not a condition precedent to enforcement of the subject Loft Law regulations, and as Triad was sufficiently apprised of ongoing landlord-tenant actions and had actual notice of the Harassment Order, this Court cannot say that the Loft Board's final determination was arbitrary, capricious, or affected by an error of law.

This Court has considered Triad's other arguments and finds them to be unavailing and/or non-dispositive.

Conclusion

Thus, for the reasons stated herein, the petition is denied in its entirety, and the Clerk is hereby directed to enter judgment dismissing the petition.

7/26/2023
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

HON. ARTHUR F. ENGORON

GRANTED

DENIED

GRANTED IN PART

OTHER

J.S.C.

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE