

Ninth Ave. Realty LLC v State of N.Y. Div. of Hous. & Community Renewal

2024 NY Slip Op 32125(U)

June 24, 2024

Supreme Court, New York County

Docket Number: Index No. 159514/2019

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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NINTH AVENUE REALTY LLC,

Petitioner,

- v -

STATE OF NEW YORK DIVISION OF HOUSING AND
COMMUNITY RENEWAL, MONICA MORANTE

Respondent.

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INDEX NO. 159514/2019

MOTION DATE N/A¹

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 18, 19, 20, 22, 23, 25, 26, 27, 28, 29, 30, 31, 33, 34

were read on this motion to/for ARTICLE 78.

The petition is to annul a decision by the respondent the State of New York Division of Housing and Community Renewal (“DHCR”) is granted.

Background

Petitioner contends that DHCR exceeded its power and jurisdiction by decreasing a rent increase on respondent Morante (a tenant in a building owned by petitioner). Petitioner explains that in October 2017, Morante renovated the kitchen in the apartment without petitioner’s approval. Morante is rent controlled tenant.

Petitioner then commenced both a Supreme Court action and a holdover summary proceeding against Morante arising out of this unsanctioned renovation. Among the various relief petitioner sought included a claim for eviction. Those litigations were resolved pursuant to

¹ The Court must address the elephant in the room - that this proceeding was fully briefed as of July 2020. Although it was only recently assigned to this part, the Court apologizes for the inexcusable and absurd delay in the resolution of this proceeding.

a settlement in which Morante, who was represented by counsel, assigned the kitchen improvements to petitioner and consented to a rent increase of \$150 (the highest amount permitted for these individual apartment improvements). Petitioner contends it was entitled to this rent increase without DHCR approval under the relevant regulations but that DHCR assigned a docket number to this dispute. It complains that DHCR then decreased the amount of the rent increase, limited the application of the increase to thirty years, and limited petitioner from recovering future renovation costs for 15 years.

Respondent DHCR cross-moves to dismiss on the ground that this dispute should be remitted back to DHCR for further review. It claims that it “should be reconsidered as to their merits and warrant a re-examination of the evidentiary record and the legal issues raised therein” (NYSCEF Doc. No. 25, ¶ 10).

Petitioner opposes this requested relief and argues that there is no basis to find that the record before DHCR was inadequate or incomplete. It emphasizes that DHCR’s decision clearly violates 9 NYCRR § 2202.4.

DHCR maintains in reply that part of petitioner’s requested relief (prohibition) does not prevent the Court from remitting the dispute back to DHCR. It emphasizes that it has the power to institute proceedings on its own despite the fact that petitioner and the tenant entered into an agreement concerning her rent increase.

Discussion

The Court denies the cross-motion and grants the petition. No one disputes that 9 NYCRR § 2202.4(a)(2) specifically provides that a landlord is entitled to rent increase under these circumstances “where the tenant has agreed to such modification or increase and the owner has obtained written informed tenant consent to such rent increase.”

Here, the facts surrounding that consent are straightforward. Petitioner and respondent Morante (who was represented by counsel) entered into a settlement in which she specifically agreed to the rent increase in exchange for *inter alia* petitioner withdrawing its efforts to evict her (NYSCEF Doc. No. 13). This extensive settlement agreement also included petitioner agreeing to settle its claims for legal fees while Morante assigned the improvements (valued at \$9,760.28) to petitioner (*id.*). Put another way, petitioner and Morante agreed to move past the fact that she facilitated extensive renovations to an apartment that she did not own without permission from the landlord.

DHCR did not cite an adequate reason for why this dispute should be remitted back to DCHR. It did not identify what evidence it failed to consider or what could be accomplished (other than delay) in sending the matter to DCHR once again. To be sure, DHCR is correct that it has the authority to *sua sponte* commence its own proceedings and to oversee rent increases for rent controlled tenants. But DHCR's papers only provide vague justifications for remittal and do not explain why its reduction in the agreed upon rent increase was rational given that the tenant, who was represented by counsel, consented to this outcome, and avoided possible eviction and a legal fee assessment.

Moreover, the Court grants the petition even though respondent DHCR has not yet answered. "As a result of the mandatory language contained in CPLR 7804(f), the petition may not be decided on the merits without allowing the appellants the opportunity to interpose an answer *unless the facts are so fully presented in the motion papers that it is clear that there are no factual disputes and no prejudice will result to the parties*" (*Matter of Wood v Glass*, 226 AD2d 387, 388 [2d Dept 1996] [emphasis added]).

Here, there are no factual disputes. Everyone agrees that petitioner tried to evict the tenant after discovering that she renovated the kitchen without the landlord’s permission. As part of an overall settlement agreement, the tenant agreed to the maximum allowable rent increase under the applicable rent stabilization laws in exchange for *inter alia* not getting evicted. DHCR then issued a decision reducing that rent increase and now DHCR asks to remit this claim back to the agency level without identifying any reason for doing so. This Court declines to delay this dispute any further given that 9 NYCRR § 2202.4(a)(2) clearly permits this rent increase due to Morante’s informed consent and that DCHR did not dispute the applicability of this regulation.

In this Court’s view, remittal back to an agency is appropriate where the first disposition failed to properly account for key evidence or suffered from some obvious procedural defect that drastically changed the outcome. It is not justified where the agency only offers a vague reason for a redo.

Accordingly, it is hereby

ORDERED that the cross-motion to dismiss is denied; and it is further

ADJUDGED that the petition is granted without costs or disbursements; and it is further

ORDERED that the decision by respondent the State of New York Division of Housing and Community Renewal that lowered the subject rent increase is nullity and is hereby vacated; the terms of the stipulation must be followed.

6/24/2024
 DATE


 ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED
 SETTLE ORDER
 INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
 GRANTED IN PART
 SUBMIT ORDER
 FIDUCIARY APPOINTMENT

OTHER
 REFERENCE