Joachim v Riverton Sq. LLC
2025 NY Slip Op 32452(U)
July 10, 2025
Supreme Court, New York County
Docket Number: Index No. 155157/2020
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 02M

Justice

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MIRLANDE JOACHIM,

Plaintiff,

- v -

RIVERTON SQUARE LLC,RIVERTON SQUARE HOUSING DEVELOPMENT FUND CORPORATION,

Defendant.

---X

INDEX NO. 155157/2020

MOTION DATE 09/03/2024

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 161, 162, 163, 164, 165, 166, 167

were read on this motion to/for JUDGMENT - SUMMARY.

In this residential rent overcharge action, Defendants Riverton Square LLC and Riverton Square Housing Development Fund Corporation (collectively "Defendants") seek summary judgment dismissing the Amended Complaint (NYSCEF Doc. No. 120) and granting their counterclaim for counsel fees. Plaintiff Mirlande Joachim ("Plaintiff") opposes the motion and cross-moves for summary judgment on the Complaint and for sanctions. Defendants oppose the cross-motion.

Plaintiff is the tenant of record of Apartment #12F ("Apartment") in a building located at 2235 Fifth Avenue in Manhattan ("Building"), part of an apartment complex owned by Defendant Riverton Square Housing Development Fund Corporation. On October 7, 2013, Plaintiff executed a non-rent-regulated lease beginning October 9, 2013 and ending on October 31, 2014 for a monthly rent of $2,200 (NYSCEF Doc. No. 117). At the time, the Building was owned by non-party 2171-2200 Madison Avenue Holdings, LLC ("Former Owner"). Pursuant to a deed annexed by Defendants (NYSCEF Doc. No. 116), the Building was sold to Riverton

Square Housing Development Fund Corporation on January 5, 2016. Defendant Riverton Square LLC is the Managing Agent of the apartment complex. Plaintiff subsequently signed a series of lease renewals (NYSCEF Doc. No. 117, at 70). Defendants represent that Plaintiff's current rent is $2,500 (NYSCEF Doc. No. 115, Defendants' Aff in Support, ¶ 5).

On September 11, 2014, the Riverton Tenants' Association commenced a rent overcharge class action against the Former Owner, *Riverton Tenants' Association et al v Compassrock Real Estate LLC et al*, NY County Index No. 652778/2014 ("Prior Action"). Plaintiffs in that action claimed the defendants improperly collected rent increases that were based on purported Major Capital Improvements (NYSCEF Doc. No. 124, ¶¶ 3-5). The Complaint alleges: "The members of RTA are rent regulated tenants who occupy and live in certain rent regulated and/or rent stabilized apartments in the Buildings including, but not limited to, the following apartments . . . 12F . . . in the building located at 2235 Fifth Avenue . . ." (*id.* ¶ 18).

The Prior Action settled on February 3, 2015. The Court (Edmead, J.) so ordered the Stipulation of Settlement ("Stipulation") and entered an order certifying the class and approving the Notice of Settlement of Class Action Lawsuit (NYSCEF Doc. No. 126). The Stipulation of Settlement provides: "The parties agree that for purpose of this stipulation and settlement of all claims, this action shall be treated and certified by the Court as a class action, with the Riverton Rent stabilized tenants constituting the class" (Stipulation at 4). It further provided:

> This settlement shall finally resolve all claims, complaints, affirmative defenses, counterclaims or causes of action asserted by plaintiffs in this action and all related Housing Court matters including, but not limited to, claims asserted in the Complaint and claims related to: rental overcharges, MCI's, SCRIE, DRIE, Late Fees, Leases, Rent Reduction orders, *Casado*, Errors in calculation, Interest claims and Treble Damage claims.

(*Id.*). It provided for a procedure for agreeing to and distributing a Class Notice to each "Riverton Rent Stabilized Tenant" and an opt-out procedure (*id.* at 5-6). Finally, the Stipulation

is binding on "the respective parties . . . and successors-in-interest" and provides "The parties herein hereby mutually release each other from any and all claims relating to the rent overcharges set forth in the Complaint in the instant action" (*id.* at 10-11, 12).

Plaintiff commenced this action on July 8, 2020 and filed the Amended Complaint on July 20, 2021. The Amended Complaint alleges Defendants engaged in a fraudulent scheme by misrepresenting the regulation status of her Apartment, by presenting her with a non-rent-regulated lease and lease renewals, and by failing to file annual registration statements. The parties have engaged in some discovery, but it is incomplete and depositions have not been held. The Note of Issue has not been filed and the deadline for doing so has not passed.

Nevertheless, Defendants filed this motion, contending they are entitled to summary judgment dismissing the Amended Complaint based on the Prior Action's Stipulation and on the theory of res judicata. Defendants annex an Amendment to the Riverton Tenants' Association's by-laws, ratified September 11, 2014, which provides: "All tenants residing in the Riverton Complex are members of the Tenants' Association" (NYSCEF Doc. No. 125). Defendants maintain Plaintiff was therefore a plaintiff in the Prior Action, was bound by its settlement, and therefore is precluded from bringing the instant rent overcharge claims.

Defendants further claim that the Apartment was deregulated in 2011 by the Former Owner and that although plaintiffs in the Prior Action included the Apartment in their Complaint, the Stipulation did not ultimately identify it as a rent regulated unit. It is undisputed that Plaintiff is also not on either of the two schedules annexed to the Stipulation which list the rent regulated units in the building complex. Additionally, Defendants annex a list of rent regulated tenants prepared by counsel for plaintiffs in the Prior Action, which did not include Plaintiff (*id.*).

In opposition, Plaintiff argues she is not bound by the Stipulation. She characterizes Defendants' motion as on one hand claiming the Apartment is not rent stabilized because it was acknowledged as such in the Prior Action, while on the other hand taking the position that her claims are precluded by the settlement in that action, which only applied to the rent stabilized apartments. Plaintiff further states: "I never signed on to any class action settlement. I was never made aware of it nor agreed to the same" (NYSCEF Doc. No. 146, Plaintiff's Aff at 4).

Plaintiff further claims there are issues of fact regarding her underlying claim that there was a fraudulent scheme to deregulate her apartment. She points to New York State Division of Housing and Community Renewal ("DHCR") records for her Apartment and the Building (NYSCEF Doc. No. 154, 155, 157, 159). These records present unclear and conflicting information about who lived in her Apartment prior to and around the time of its deregulation. Plaintiff contends this is evidence that the Former Owner engaged in a fraudulent scheme to deregulate her Apartment. In response, Defendants maintain that the records contain an error whereby the tenant of 2225 Fifth Avenue #12F was listed as the tenant of Plaintiff's Apartment, 2235 Fifth Avenue #12F and that this inaccuracy is insufficient to demonstrate the existence of a fraudulent scheme.

On a motion for summary judgment, the moving party "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Should the movant make its prima facie showing, the burden shifts to the opposing party, who must then produce admissible evidentiary proof to establish that material issues of fact exist (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

A party is barred from obtaining relief in an action based on res judicata when there is already a valid final judgment between the same parties on the same cause of action (*Parker v Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 347 [1999], *citing Reid v Reilly*, 45 NY2d 24, 27 [1978]). "Once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy" (*O'Brien v Syracuse*, 54 NY2d 353, 357 [1981], *citing Reilly*, 45 NY2d, at 29-30). However, if applied too rigidly, res judicata "could work considerable injustice" (*Reilly*, 45 NY2d, at 28). Thus, res judicata "is tempered by recognition that two or more different and distinct claims or causes of action may often arise out of a course of dealing between the same parties" (*id.* [internal citation omitted]).

The Court finds that the Prior Action does not preclude Plaintiff from bringing the instant claims here. Although Plaintiff may have been a party to that action by virtue of being a tenant in the Building and therefore a member of the Riverton Tenants' Association, the Stipulation limits the class to "Riverton Rent stabilized tenants." It is undisputed that Plaintiff was not in that group and therefore did not receive the Class Notice, could not have opted out, and is not receiving any benefit from the settlement. Additionally, the Stipulation's release provides: "The parties herein hereby mutually release each other from *any and all claims relating to the rent overcharges set forth in the Complaint in the instant action*" (emphasis added). Those claims involved rent stabilized apartments with purported overcharges stemming from Major Capital Improvements. Plaintiff here is a tenant pursuant to a non-rent-regulated lease who claims her Apartment was unlawfully deregulated. Therefore, her claim is beyond the scope of the Stipulation's release language. Accordingly, Defendants' motion for summary judgment on this basis is denied.

With respect to the merits, this action was filed after the enactment of the Housing Stability and Tenant Protection Act of 2019 ("HSTPA") but the purported overcharges occurred prior to the statute's effective date, therefore pre-HSTPA law applies (*Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d 332, 363 [2020]). Under this law, a complaining tenant is limited to recovery based on overcharges incurred up to four years before the complaint, but the court may look beyond the four-year period to determine the base date amount if the tenant can demonstrate that the landlord engaged in a fraudulent scheme to unlawfully inflate rents and/or unlawfully deregulate their unit (*id*. at 354-56). A court must approach a fraud determination considering the "totality of the circumstances" (*Cox v 36 S Oxford St, LLC*, 237 AD3d 604, 606 [1st Dept 2025]).

At this stage, where discovery is incomplete, issues of fact exist with respect to Plaintiff's fraud claim. The DHCR records do not clearly indicate who lived in Plaintiff's Apartment at what time, and these discrepancies may have had an impact on the Apartment's deregulation. Additional discovery, including depositions, might clarify the information obtained from the DHCR (*see Cannon v New York City Police Dept.*, 104 AD3d 454 [1st Dept 2013]; *see also Barreto v City of New York*, 194 AD3d 563, 564 [1st Dept 2021]). The parties' motions are therefore premature.

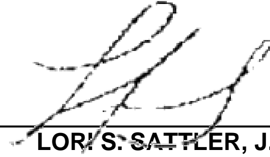
In light of the foregoing, Defendants' motion for summary judgment on their counterclaim for legal fees, which is based on a provision in Plaintiff's lease, is likewise denied.

For reasons set forth herein it is hereby:

ORDERED that the motion and cross-motion are denied without prejudice; and it is further

ORDERED that counsel shall appear for a Status Conference on September 16, 2025 at 9:30 a.m. at 60 Centre Street, Room 212.

All other relief sought is denied. This constitutes the Decision and Order of the Court.



7/10/2025				LORI S. SATTLER, J.S.C.		
DATE						
CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION	
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ] OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER	
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