Brookes v 157th St. Assoc., LLC
2025 NY Slip Op 32518(U)
July 15, 2025
Supreme Court, New York County
Docket Number: Index No. 160664/2020
Judge: Mary V. Rosado
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT:	HON. MARY V. ROSADO *Justice*	PART	33M
COLIN BROOKES, CELIA HATTON, RAVENNA LIPCHIK, KAREN POLESHUCK, MAX JACOB, ISAAC HAYWARD, Plaintiffs, - v - 157TH STREET ASSOCIATES, LLC, Defendant.		INDEX NO.	160664/2020
		MOTION DATE	03/28/2025
		MOTION SEQ. NO.	004
		DECISION + ORDER ON MOTION	

The following e-filed documents, listed by NYSCEF document number (Motion 004) 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER .

Upon the foregoing documents, and after a final submission date of May 2, 2025, Plaintiffs Colin Brookes, Celia Haton, Ravenna Lipchik, Karen Poleshuck, Max Jacob, and Isaac Hayward's (collectively "Plaintiffs") motion for summary judgment is denied. Defendant 157th Street Associates, LLC's ("Defendant") cross motion for summary judgment is granted in part and denied in part.

I. Background

The Plaintiffs are, or were, tenants who lived in the building located at 602 West 157th Street (the "Building"). Defendant owns the Building and is, or was, the Plaintiffs' landlord. The Plaintiffs sue Defendant for alleged rent overcharges, and claim Defendant engaged in a fraudulent scheme to deregulate Plaintiffs' apartments through fake or artificially inflated individual apartment improvements and fake "buffer tenants."

In motion sequence 002, Defendant previously moved for summary judgment dismissing Plaintiffs' Complaint. In its Decision and Order dated April 18, 2023, the Court granted summary

judgment as to Plaintiff Colin Brookes' claims for rent overcharge as he was charged a first rent above the luxury deregulation threshold in a newly formed apartment. The Court denied Defendants' motion, with respect to all other Plaintiffs because (1) the motion was premature as Defendant's principal, Konstantinos Kapelonis, who offered an affidavit in support of Defendant's motion, had not yet been deposed, and (2) due to evidence of repeated misstatements on DHCR rent registrations, the failure to correct these errors, a pattern of alleged "buffer tenants," and claims of allegedly false or inflated individual apartment improvements taken together constituted sufficient indicia of fraud to pierce the four-year lookback period for purposes of Plaintiffs' rent overcharge claims. Since then, discovery has been completed and the note of issue filed. Now, Plaintiffs move for summary judgment and Defendant cross moves for summary judgment.

II. Discussion

A. Standard

"Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact." (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party's "burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial (*See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

B. Plaintiffs' Motion

Plaintiffs' motion for summary judgment is denied. As a preliminary matter, the Court of Appeals has now clarified that the common law elements of fraud are not required to pierce the

four-year look back period or establish fraud in the rent overcharge context – the fraud exception applies where the totality of the circumstances establish sufficient indicia of a "fraudulent scheme to evade the protections of the rent stabilization law" (*Burrows v 75-25 153rd Street, LLC*, — NE3d —, 2025 Slip Op 01669 at *3 [2025]; *see also Cox v 36 S Oxford St, LLC*, 237 AD3d 604, 606 [1st Dept 2025]).

Plaintiffs allege there is sufficient indica of fraud with respect to these apartments due to repeated identical misstatements on Division of Housing and Community Renewal registrations, rent spikes arising from purported individual apartment improvements which have not been corroborated, and a pattern of tenants who live in the recently deregulated apartments for one year or less following deregulation. This Court previously found in motion sequence 002 that these indicators, when viewed collectively, may constitute sufficient indicia of fraud. Since that ruling, Plaintiffs have come forward with more evidence.

For example, Plaintiffs rely on the expert affirmation of Christopher J. Leahy, a licensed New York City general contractor and New York City landlord who has worked on many residential renovation projects (NYSCEF Doc. 178). Based on Mr. Leahy's inspection of Apartment 4A and his review of records produced by Defendant, Mr. Leahy opined that the claimed individual apartment improvements did not take place, did not qualify as an individual apartment improvement, or were inflated. As to the issue of illusory or "buffer" tenants, Mr. Kapelonis, at his deposition, admitted that the lease issued for Apartment 6EE, which was leased for $3,050.00 following the eviction of prior rent stabilized tenants, was issued to Mr. Kapelonis' daughter's boyfriend (NYSCEF Doc. 173 at 53). He admitted at his deposition this tenant never resided in the building (*Id.* at 58).

In reply, Defendant argues that Mr. Kapelonis is not sophisticated and is a non-English speaker who made mistakes on DHCR registrations but did not intend to perpetrate a fraudulent scheme. Further, Mr. Kapelonis argues that he does not have complete records of the apartment improvements because he believed he was not required to maintain them indefinitely and, in any event, he claims his office was flooded during Hurricane Sandy, causing his records to become irreparably damaged. Defendant argues that the illusory or buffer tenant pattern set forth by Plaintiffs is conclusory and speculative. As to Apartment 6EE, the prior rent-controlled tenant was evicted, and the next tenant was Mr. Kapelonis' daughter's boyfriend, who was charged far above the luxury deregulation threshold, but admittedly did not pay rent or live in the apartment. Mr. Kapelonis claims his intention was not to deregulate fraudulently the apartment but to help his daughter and her boyfriend. However, the record shows Mr. Kapelonis deregulated Apartment 6EE by "helping out" his daughter and her boyfriend.

Given the totality of the circumstances, namely the evidence that (1) individual apartment improvements may have been falsely inflated or non-existent; (2) the pattern of incorrect Division of Housing and Community Renewal registrations stating apartments were deregulated based on substantial rehabilitation rather than high rent vacancy; (3) the pattern of tenants who moved in after deregulation and subsequently vacated one year later, and (4) the direct evidence that at least one tenant post-deregulation never lived in the apartment and was related to Defendant's principal, the Court finds there is sufficient indicia of fraud to pierce the four-year lookback period (*see Butterworth v 281 St. Nicholas Partners, LLC*, 160 AD3d 434 [1st Dept 2018]).

However, given the heavy burden on a motion for summary judgment, considering the competing and contradictory evidence, viewing the facts in the light most favorable to the non-movant, and given the numerous credibility issues, the Court finds it remains a triable issue of fact

as to whether Defendant actually and willfully engaged in an improper and/or fraudulent scheme to deregulate the apartments. The record presents credibility issues which require findings by a trier of fact. Therefore, Plaintiff's motion is denied (*see also Gunther v 29th Street PVP, LLC*, 238 AD3d 859, 860-61 [2d Dept 2025]; *Ampim v 160 East 48th Street Owner II LLC*, 208 AD3d 1085, 1086-87 [1st Dept 2022]).

C. Defendant's Cross Motion

As a preliminary matter, the Court has considered Plaintiffs' argument that Defendant's motion is an impermissible successive summary judgment motion and finds it to be without merit. The Court's decision on Defendant's prior motion, which was made prior to the completion of discovery, expressly contemplated Defendant filing a renewed motion once discovery was complete. However, upon consideration of Defendant's motion, for the same reasons this Court finds triable issues of fact preclude summary judgment in favor of Plaintiffs, the Court finds triable issues of fact preclude summary judgment for Defendant (*see Badesch v Fort 710 Associates, L.P.*, --- N.Y.S.3d ----, 2025 WL 1799505 [1st Dept 2025]; *Malkiewicz v Acquisition America XI LLC*, 233 AD3d 587, 588 [1st Dept 2024]).

The question of whether individual apartment improvements took place or if the expenditures for those improvements were inflated fraudulently is typically a question to be resolved by the factfinder "based on the persuasive force of the evidence submitted by the parties" (*Jemrock Realty Co., LLC v Krugman*, 13 NY3d 924, 926 [2010]; *see also Ampim v 160 E. 48th Street Owner II LLC*, 208 AD3d 1085, 1086-87 [1st Dept 2022]). To establish the apartments were properly deregulated pursuant to individual apartment improvements, the burden is on Defendant to sufficiently document the apartment improvements by proffering invoices and checks for all sums charged (*Gourin v 72 A Realty Associates, L.P.*, 226 AD3d 475, 476 [1st Dept 2024]).

While Defendant has proffered some documents, Plaintiff's expert has called into question the validity of individual apartment improvements for at least one of the apartments (*Davis v Graham Court Owners Corp.*, 211 AD3d 629, 630 [1st Dept 2022]; *Nolte v Bridgestone Associates, LLC*, 167 AD3d 498 [1st Dept 2018]). Moreover, Defendant claims it is unable to produce the full breadth of documents due to a flood from Hurricane Sandy at its Astoria office. Yet this assertion is called into question, as Helen Kapilonis later swore in a *Jackson* affidavit that the records were kept not in Astoria but at 13-61 145th Place, Whitestone, New York (*see* NYSCEF Doc. 174).

There is a further issue of fact as to whether Defendant intentionally filed incorrect Division of Housing and Community Renewal registrations by claiming deregulation via substantial rehabilitation as opposed to high rent vacancy deregulation, thereby tainting the base-date rent. The incorrect filings, potentially inflated or false individual apartment improvements, and pattern of year-long tenants who subsequently vacate the premises post-deregulation "may well be viewed as an attempt to obfuscate the regulatory status of the apartment" (*Butterworth v 281 St. Nicholas Partners, LLC*, 160 AD3d 434 [1st Dept 2018]). Thus, given the totality of the circumstances, and viewing the facts in the light most favorable to the non-movants, Defendant's motion for summary judgment is denied (*see also Reichenbach v Jacin Investors Corp.*, 237 AD3d 446, 447-49 [1st Dept 2025]). However, as Plaintiffs have not opposed Defendant's motion for summary judgment dismissing Plaintiffs' third cause of action alleging a General Business Law § 349 and consumer injury claim, this claim is dismissed as abandoned.

Accordingly, it is hereby,

ORDERED that Plaintiffs' motion for summary judgment is denied; and it is further

ORDERED that Defendant's motion for summary judgment is granted solely to the extent that Plaintiff's third cause of action alleging a General Business Law § 349 and consumer injury

claim is dismissed, without opposition, and Defendant's motion is otherwise denied; and it is further

ORDERED that within ten days of entry, counsel for Plaintiffs shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

7/15/2025	Mary V Rosado JSC
DATE	HON. MARY V. ROSADO, J.S.C.

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