

Jekielek v 260 Partners, L.P.

2025 NY Slip Op 32840(U)

July 29, 2025

Supreme Court, New York County

Docket Number: Index No. 161176/2017

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

-----X

KYLE JEKIELEK, JON JEKIELEK

Plaintiffs,

- v -

260 PARTNERS, L.P.,

Defendant.

-----X

INDEX NO. 161176/2017

MOTION DATE 06/26/2025

MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199

were read on this motion to _____ Renew _____.

Plaintiffs’ motion to renew is denied.

Background

In this rent overcharge case, plaintiffs claim their apartment received J-51 benefits and was illegally and fraudulently deregulated by defendant. Defendant claimed that significant rent increases, which allowed defendant to remove this unit from rent stabilization, were permitted based upon individual apartment improvements (“IAIs”). However, defendant could not prove it performed the IAIs.

This Court granted summary judgment to plaintiffs finding that defendant’s conduct amounted to a fraudulent and illegal deregulation, partly because defendant claimed that the significant rent increases were justified due to money defendant spent on IAIs without providing evidence that it performed the IAIs (NYSCEF Doc. No. 180). This Court therefore found that plaintiffs were entitled to use the statutory default formula to calculate the damages caused by the landlord’s fraudulent deregulation of their unit (*id.*). Tenants are permitted to use the default

formula only when the landlord's conduct in illegally deregulating a unit rises to the level of fraud.

Defendant appealed, and this Court's order was partially modified with respect to the calculation of damages. The First Department held that the apartment was illegally deregulated, but there is a question of fact as to whether defendant's conduct rose to the level of fraud and whether the default formula can therefore be used to calculate plaintiffs' damages (NYSCEF Doc. No. 183). Specifically, the First Department found that the assertion that the rent increases were based on fabricated IAIs was a question for the factfinder (*id.*). At the time, the law required that all elements of common law fraud be proven against a landlord for a finding of fraudulent deregulation (*see* NYSCEF Doc. No. 192).

Soon afterward, the applicable laws were changed, and Courts are now tasked to examine the "totality of the circumstances" when considering whether a landlord fraudulently deregulated a rent-stabilized unit (*id.*). A tenant no longer needs to prove all elements of common-law fraud (*id.*).

Plaintiffs made a motion to renew to the First Department based on this change in the law and the First Department summarily denied this application in a decision dated July 11, 2024 (NYSCEF Doc. No. 191).

Plaintiffs filed the instant motion seeking leave to renew their original motion for summary judgment based upon the amended laws – the same basis upon which plaintiffs unsuccessfully moved before the First Department.

Discussion

Under CPLR 2221(e), a motion to renew must be "based upon...a change in the law that would change the prior determination." In this instance, the Court must consider that, "[a]n

appellate court's resolution of an issue on a prior appeal constitutes the law of the case,” is binding on the trial Court, and forecloses re-examination of the question (*New Hampshire Ins. Co. v MF Global Fin. USA Inc.*, 204 AD3d 141, 151 [1st Dept 2022] [internal quotations and citations omitted]).

Plaintiffs contend that the First Department’s dismissal was on procedural grounds, and that the substance of the motion was therefore not reached. Plaintiffs argue that the change in law requires that this Court reinstate the decision granting them summary judgment on the fraud issue even though the First Department modified that decision and denied plaintiffs’ motion to renew based upon the change of law.

Defendant contends that the motion to renew is an improper attack on the decision of the appellate court. Defendant’s argument relies on a decision where, when faced with an almost identical factual issue involving the same defendant, Justice Kotler ruled that the First Department’s decision not to renew its order constituted law of the case and declined to “reopen what has already been decided” by the First Department (*Najera-Ordonez v 260 Partners L.P.*, 2025 NY Slip Op 31336[U] [Sup Ct, NY County 2025]). That court reasoned that since plaintiffs relied on the exact same chapter amendments when they moved the First Department to renew its prior order and the First Department denied plaintiffs’ motion, that the trial court was bound by the First Department’s decision as law of the case (*id.*).

In reply, plaintiffs argue that Justice Kotler’s decision was made in error and is not binding on this Court.

While plaintiffs claim that the First Department’s denial was purely procedural, the First Department’s decision makes no mention of that reasoning. The order merely denied the motion to renew. Furthermore, the First Department’s earlier decision clearly stated that there was a

question for the factfinder – whether the rent increases were based on fabricated IAIs. This question of fact is not obviated by a change of law. Since the First Department declined to revisit its order which modified this Court’s original grant of summary judgment to plaintiffs and ruled that there is a question of fact that precludes summary judgment, this Court is bound by the First Department’s decision as law of the case. The Court therefore denies plaintiffs’ motion to renew in its entirety.

Summary

The First Department made clear that there is a question of fact regarding the IAIs. Therefore, even under the new “totality of the circumstances” analysis, plaintiffs have not shown that they have eliminated all issues of fact on the fraud issue. The Court therefore denies plaintiffs’ motion to renew in its entirety.

Accordingly, it is hereby

ORDERED that plaintiffs’ motion is denied in its entirety.



7/29/2025
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