SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MARY V. ROSADO** **PART** **33M**

Justice

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SULA MALINA, TY ATKIN, KATHERINE DE CHANT, MAJOR KERR, HALEY NEISSER, and ERIDANIA VASQUEZ,

Plaintiffs,

- v -

158 MANAGEMENT LLC, and DAVID HAKAKIAN,

Defendants.[1]

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INDEX NO. 450212/2021

MOTION DATE 07/29/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 105, 107, 108

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

Upon the foregoing documents, and after a final submission date of May 13, 2025, Plaintiffs Sula Malina ("Malina"), Ty Atkin ("Atkin"), Katherine De Chant ("De Chant"), Major Kerr ("Kerr"), Haley Neisser ("Neisser"), and Eridania Vasquez ("Vasquez") (collectively "Plaintiffs") motion for summary judgment on their first cause of action issuing a declaration that Plaintiffs' apartments have at all relevant times been subject to the protections of the Rent Stabilization Law and Rent Stabilization Code, on their second cause of action declaring that Plaintiffs were unlawfully overcharged and employing the default formula to calculate the lawful rent-stabilized rent, and setting this matter down for a hearing to determine damages, is granted in part and denied in part.

[1] The caption was amended via Order of Hon. Alexander Tisch dated December 15, 2021 (NYSCEF Doc. 17). However it appears the parties never served that order on the General Clerk's Office, therefore NYSCEF's records do not reflect the amended caption.

I. Background

Plaintiffs are current and former tenants at 533 West 158, New York, New York (the "Building"). Defendant 158 Management LLC ("158 Management") owns the Building and Defendant David Hakakian ("Mr. Hakakian") is the manager of 158 Management. The Plaintiffs allege that Defendants have engaged in a fraudulent scheme to increase illegally Plaintiffs' legal regulated rent and remove their units from rent stabilization. Now, Plaintiffs move for summary judgment seeking a declaration that all of their apartments are subject to rent stabilization and setting the legal regulated rent at legal regulated rent as of the base date or by applying the default formula. Defendants oppose. For the following reasons, the motion is granted in part and denied in part.

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. Apartment 62

Plaintiffs are granted summary judgment on their request for declaratory relief adjudging Apartment 62 is a rent-stabilized apartment. Defendants' argument that Plaintiffs are barred from

challenging the deregulated status of their apartment based on the statute of limitations is incorrect. In *Gersten v. 56 7th Ave. LLC*, 88 A.D.3d 189, 199 (1st Dept. 2011), the First Department specifically held: "a tenant should be able to challenge the deregulated status of an apartment at any time during the tenancy. Indeed, courts have uniformly held that landlords must prove the change in an apartment's status from rent stabilized to unregulated even beyond the four-year statute of limitations for rent overcharge claims." It is the owner's burden to establish that deregulation was proper (*Cox v 36 S. Oxford St, LLC*, 237 AD3d 604, 605 [1st Dept 2025]). Defendants have failed to meet this burden. In fact, Defendants, in their motion papers, concede that Plaintiff Vasquez's "apartment remains subject to the rent stabilization laws of the State of New York" (*see* NYSCEF Doc. 92 at ¶ 69). Nonetheless, under the DHCR registrations provided, Apartment 62 is not registered as rent stabilized.

Moreover, the DHCR registration erroneously states that Apartment 62 became exempt due to high rent vacancy, even though the undisputed testimony shows that Mrs. Vasquez's husband, Carlos Vasquez, lived in Apartment 62 continuously since 1993, with his mother, Tomasina Figueroa, the last registered rent stabilized tenant. Moreover, Mrs. Vasquez lived with Mr. Vasquez and her mother-in-law in Apartment 62 since 2011. Therefore, Mr. and Mrs. Vasquez were entitled to a rent-stabilized renewal lease pursuant to succession rights under the Rent Stabilization Law. Defendants have failed to offer anything to rebut this evidence. Therefore, Plaintiffs are entitled to summary judgment on their request for a declaration that Apartment 62 is subject to the rent stabilization laws.

Because Apartment 62 is subject to rent stabilization, and as the last reliable rent was the registered rent on the June 15, 2015 base date, which was $939.68, the Court grants Plaintiffs'

request to set the legal regulated rent of Apartment 62 at $939.68. The rent shall be frozen at this rate until Defendants properly register Apartment 62 with DHCR.

C. Apartment 51

Plaintiffs are granted summary judgment with respect to Apartment 51. Mr. Atkin has been a tenant in Apartment 51 since 2015 pursuant to multiple market rate leases.[2] However, the DHCR filings for Apartment 51 claimed that Apartment 51 was rent stabilized but vacant from 2015 through 2017, until Defendants claimed it was exempt in 2018 based on high rent vacancy (NYSCEF Doc. 72). There are further improprieties, as according to DHCR filings, the last registered rent stabilized tenants were individuals named Yolanda Tejada and Jose Grullon with a lease beginning on July 1, 2013, and ending June 30, 2015. However, according to records produced by Defendants in discovery, the tenants residing in Apartment 51 for at least part of this time were David Hutchison, Taisa Hutchison, and Moore R. Bromley, and they too were not provided a rent stabilized lease (NYSCEF Doc. 68).

At his deposition, Mr. Hakakian claims that Apartment 51 was deregulated from individual apartment improvements based on a gut renovation, but he could not remember when the gut renovation took place or when it was finished (NYSCEF Doc. 80 at 50). When confronted with the DHCR filing saying Apartment 51 was vacant, despite it being leased to Mr. Atkin, Mr. Hakakian could not explain the discrepancy other than saying "maybe they made a mistake with filing." (NYSCEF Doc. 80 at 57). At a subsequent deposition Mr. Hakakian stated Defendants hired an outside party to prepare DHCR filings, and that the third-party erroneously prepared the DHCR filings for Apartment 51 (NYSCEF Doc. 81 at 147-149). Mr. Hakakian testified they tried to correct the filings once it was brought to their attention, but DHCR allegedly told him it would

[2] Ms. Malina also resides in Apartment 51 and is Mr. Atkin's roommate.

be "nearly impossible to do." (NYSCEF Doc. 81 at 147). There are records from the Department of Buildings showing a permit was opened for Apartment 51 for interior renovation on March 14, 2014 (NYSCEF Doc. 93). However, there is no explanation as to how there was a gut renovation despite Apartment 51 being occupied either by rent stabilized tenants according to DHCR registrations, or by free-market tenants according to Defendants' discovery production. Defendants have also failed to provide any detail as to the opened permit or who was paid for the allegedly permitted work.

Defendants have utterly failed to explain any of the conflicting information regarding actual tenants and leases issued for Apartment 51 versus the information contained in DHCR filings for Apartment 51. They also have failed to show compliance with the previously applicable RSL § 26-504.2(b) and RSC § 2522.5(c). Therefore, Plaintiffs are granted summary judgment with respect to their request declaring Apartment 51 subject to rent stabilization and setting the legal regulated rent at the last legal regulated rent of $1,092.41 (*see also Fuentes v Kwik Realty LLC*, 186 AD3d 435, 437 [1st Dept 2020]).

D. Apartments 52, 64, and 24

Plaintiffs' motion with respect to Apartment 52 is denied. This apartment does not have the same glaring discrepancies as the prior two apartments. The DHCR registration history shows that the apartment became vacant in 2013 and was then registered deregulated pursuant to high rent vacancy in 2014 (NYSCEF Doc. 73). Ms. DeChant, the former tenant of Apartment 52, did not move in until May 2016. Mr. Hakakian testified that a gut renovation took place with respect to Apartment 52 (NYSCEF Doc. 80 at 58). That there are no corresponding Department of Buildings permits is not dispositive as not all individual apartment improvements require a permit (*Chang v Westside 309 LLC*, 222 AD3d 550, 551 [1st Dept 2023]; *see also* NYSCEF Doc. 81 at

101-02). Moreover, by Plaintiffs' own admission, Defendants have produced invoices from 2014 of individual apartment improvements in the amount of at least $20,000 (NYSCEF Doc. 33 at ¶¶ 36-37). There were also a plethora of other cancelled checks and invoices produced by Defendants which, although not specifically ear marked for Apartment 52, may ultimately support the claimed individual apartment improvements to Apartment 52 if Defendants are able to credibly tie them to Apartment 52 at trial.

Although Ms. DeChant provided testimony regarding a leaky ceiling, which she claims is proof the claimed individual apartment improvements did not take place, given the conflicting testimonial and documentary evidence, there are issues of fact requiring a trial to determine whether the apartment was properly deregulated (*see, e.g. Engholm v AIMCO 240 West 73rd Street, LLC*, 220 AD3d 481, 481-82 [1st Dept 2023]). The question of whether individual apartment improvements took place or if the expenditure for those improvements was fraudulently inflated 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]). Viewing the facts in the light most favorable to the non-movant, summary judgment with respect to Apartment 52 is denied (*see also Gassama v New York State Department of Housing and Community Renewal*, 226 AD3d 589 [1st Dept 2024]).

Plaintiffs' motion with respect to Apartment 64 is denied. The DHCR rent registration history for this apartment reflects it became vacant in 2012 and was ultimately declared exempt due to high rent vacancy in 2014. Plaintiffs admit there is evidence that Apartment 64 underwent an interior renovation in 2013, and other records indicate multiple five-figure renovations took place (NYSCEF Doc. 71). Mr. Kerr, the former tenant of Apartment 64, admittedly did not take

possession until December of 2018, and the tenant following the alleged individual apartment improvements was Sean Kirkpatrick, who allegedly was charged rent at $2,500 (NYSCEF Doc. 70). There are unresolved issues of fact which preclude summary judgment declaring Apartment 64 is rent-stabilized. Mainly, there are issues of fact as to whether the individual apartment improvements took place or were substantial enough to take the apartment out of rent stabilization (*Jemrock, supra*). There are other issues of fact as to whether the rent issued to Sean Kirkpatrick was properly calculated, as just one month prior to Mr. Kirkpatrick's lease being executed, Defendants registered the apartment with DHCR as vacant with a legal regulated rent of $1326.11 (NYSCEF Doc. 74). Mr. Hakakian testified this was "the second mistake we did for filing these" (NYSCEF Doc. 81 at 156). There also does not appear to be a rider annexed to Mr. Kirkpatrick's lease explaining the individual apartment improvements or how his rent was calculated (NYSCEF Doc. 70).

For the same reason, summary judgment is denied as to Apartment 24. Plaintiffs admit there are permits for work in Apartment 24 with a cost affidavit of $76,950.00 filed around the time the Apartment was registered as vacant, and which would have been completed around the time the Apartment was registered deregulated due to high rent vacancy (NYSCEF Doc. 71 at pp. 12-13; NYSCEF Doc. 86). While Plaintiffs cast doubt on the veracity of these alleged costs as the permit was filed not only for Apartment 24, but for three other apartments, this raises an issue of fact requiring a trial and cannot be resolved on a motion for summary judgment (*see generally Sandlow v 305 Riverside Corp.*, 201 AD3d 418, 419-20 [1st Dept 2022]).

Accordingly, it is hereby,

ORDERED that Plaintiffs' motion for summary judgment is granted with respect to Apartments 51 and 62; and it is further

ORDERED and ADJUDGED that Apartments 51 and 62 are subject to rent stabilization, the Plaintiffs residing in these apartments are entitled to rent stabilized leases, and the legal regulated rent for Apartment 51 shall be set at $1,092.41 and the legal regulated rent for Apartment 62 shall be set at $939.68; and it is further

ORDERED that at the time of trial, there shall be an inquest on the total amount of damages owed Plaintiff Eridania Vasquez, Ty Atkins, and Sula Malina on their claims for rent overcharge; and it is further

ORDERED that the remainder of Plaintiffs' motion for summary judgment is 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.

7/18/2025
DATE

Mary V. Rosado J.S.C.
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