

Kodicek v Leya, LLC

2025 NY Slip Op 33254(U)

September 2, 2025

Supreme Court, New York County

Docket Number: Index No. 150018/2023

Judge: Nicholas W. Moyne

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NICHOLAS W. MOYNE PART 41M

Justice

-----X

ANGELA KODICEK,

Plaintiff,

- v -

LEYA, LLC, MARWAN DALLOUL, AMERICAN
PROPERTIES INC.

Defendant.

-----X

INDEX NO. 150018/2023

MOTION DATE 03/27/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

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

Upon the foregoing documents, it is

The Court has considered the Defendants' motion for an order pursuant to CPLR §3212(b) granting summary judgment and dismissing the Plaintiff's Complaint, the Plaintiff's cross-motion for summary judgment on her First and Second Causes of Action, and for partial summary judgment on her Third Cause of Action, the affirmations and affidavits submitted in support and opposition thereto, and all exhibits and prior proceedings on record.

Procedural History

This action arises from a protracted dispute concerning the rent-stabilized status and legal regulated rent of apartment #5B (formerly #4B) at 325 West 57th Street, New York, New York (the "subject premises"). Plaintiff Angela Kodicek took possession of the apartment under a purportedly deregulated one-year lease (NYSCEF Doc. No. 19) commencing August 14, 2011, at a monthly rent of \$2,800.00, which was subsequently increased to \$2,900.00 per month (NYSCEF Doc. No. 20). The lease contained a rider explicitly stating it was "NOT SUBJECT TO ANY RENT REGULATIONS, RENT STABILIZATION CODE AND/OR RENT CONTROL LAW."

In November 2015, Defendant Leya, LLC (the "Owner") initiated a holdover proceeding (Leya, LLC v. Angela Kodicek, L&T Index No. 82234/15) in New York County Housing Court, alleging the premises were exempt from rent stabilization due to luxury deregulation (rent of \$2,000 or more prior to June 24, 2011). Plaintiff Angela Kodicek (the "Tenant") denied these allegations and counterclaimed that the landlord's claim of high-rent destabilization was based on fraud and illegality.

After a bench trial held from September 2018 to May 2019, Housing Court Judge Michelle D. Schreiber issued a Post-Trial Decision/Order on February 18, 2020 (NYSCEF Doc. No. 12), finding that the Owner failed to establish lawful deregulation and that the subject premises is rent stabilized. The court noted the Owner's failure to file registrations from 2008-2014, and their predecessor's failure from 1984-2007, and found instances of belated and incorrect retroactive filings inconsistent with deregulation requirements. These findings were described as "consistent with a conclusion that Defendants had engaged in a fraudulent scheme to deregulate the subject premises." The Housing Court also allowed examination of the entire rent history, finding the four-year rule inapplicable to status determinations.

The Appellate Term, First Department, unanimously affirmed the Housing Court's decision on November 3, 2021 (NYSCEF Doc. No. 39), explicitly stating that Regina "does not restrict examination of an apartment's rent history to four years prior to the commencement of the action or proceeding where the issue is the apartment's status". The Appellate Term confirmed the trial court's findings on credibility and the lack of contemporary documentary evidence, noting that "No DHCR registrations were filed for the building from 1984 through 2014, no notices required for high rent deregulation were filed or served, and there were inconsistencies and mischaracterizations in the belated, partial filing made in 2015." The Owner did not appeal this decision, rendering it final.

Despite these court rulings, the Owner attempted to amend DHCR rent registrations to identify the previously charged deregulated market rents as the Legal Regulated Rents. The DHCR Rent Administrator's Order of August 2, 2022 (NYSCEF Doc. No. 43), implicitly denied this request by stating that "No other changes are allowed" besides ministerial corrections and explicitly noting: "This is not a determination of the legal rent for the apartment but only a determination of whether the owner had sufficient

justification for amending the registration." Neither party appealed this DHCR order.

The Plaintiff commenced the instant Supreme Court action on December 26, 2022, asserting claims for a declaratory judgment setting the legal regulated rent via the "default formula," declaring the previously purported rents unreliable and unlawful (collateral estoppel), and seeking statutory damages for rent overcharges, treble damages, interest, and attorneys' fees.

Defendants' Arguments for Summary Judgment

Defendants argue that the Plaintiff's rent overcharge claim is barred by the four-year statute of limitations and the lookback rule as established by *Regina Metro Co LLC v DHCR*, 35 NY3d 332 (2020). They contend that the "rent charged on the base date" (December 26, 2018) was \$2,900.00, and since no further increase was charged, there is no overcharge. Defendants further assert that the Plaintiff has not produced "evidence of a fraudulent scheme to deregulate" necessary to pierce the four-year lookback period, and that the Housing Court's decision predated *Regina* and did not determine the lawful rent or find fraud. They also argue that the Plaintiff's fraud claim is time-barred by the six-year statute of limitations for fraud actions, as Plaintiff was aware of the alleged fraud by 2015 at the latest.

Plaintiff's Arguments in Opposition and Cross-Motion

The Plaintiff argues that the Defendants' motion should be denied because:

- Collateral Estoppel bars the Defendants from re-litigating the unlawfulness and unreliability of the market rents of \$2,800.00 and \$2,900.00, as this was definitively determined in the prior Housing Court and Appellate Term proceedings.
- The DHCR implicitly denied the Owner's application to amend rent registrations to list the deregulated market rents as Legal Regulated Rents, reinforcing that a legal regulated rent has not been established and must be determined by the court.
- There is colorable evidence of a fraudulent scheme to deregulate the apartment, allowing for review of the rent history beyond the four-year lookback period. The Housing Court's factual findings regarding non-registration and inconsistent filings support this.

The Plaintiff's cross-motion seeks summary judgment on:

- Her First Cause of Action, to establish the legal regulated rent using the default formulas under RSC §2522.6 and §2526.1, as the current purported rents are unreliable.
- Her Second Cause of Action, declaring that Defendants are collaterally estopped from denying that their purported legal regulated rents are unreliable and unlawful.
- Her Third Cause of Action, for partial summary judgment to set a factual hearing for statutory damages, including treble damages and/or interest and attorneys' fees, due to rent overcharges.

Discussion

The core of this dispute hinges on the apartment's rent-stabilized status and the application of rent overcharge rules, particularly in light of the Housing Stability and Tenant Protection Act of 2019 (HSTPA) and the Court of Appeals' decision in *Regina Metro Co LLC v DHCR*.

I. Defendants' Motion for Summary Judgment Must Be Denied.

The doctrine of collateral estoppel unequivocally bars the Defendants from re-litigating the rent-stabilized status of the apartment and the unlawfulness of the market rents charged. The Housing Court, in its February 18, 2020 Decision/Order, found that the Owner "failed to establish that it lawfully deregulated the apartment" and that "the subject premises is rent stabilized and respondent is entitled to a rent stabilized rent." This decision explicitly stated that an owner cannot prove proper deregulation "without complying with the proper regulation procedures" and without a "legally regulated rent" over \$2,000.00.

Crucially, this decision was unanimously affirmed by the Appellate Term, First Department, on November 3, 2021. The Appellate Term's decision, issued after the Court of Appeals' *Regina* ruling, explicitly clarified that *Regina* "does not restrict examination of an apartment's rent history to four years prior to the commencement of the action or proceeding where the issue is the apartment's status." This direct and binding determination precludes Defendants from asserting that the \$2,800.00 and \$2,900.00 rents constitute a "legal regulated rent". Defendants' failure to appeal this final order makes it binding.

The Plaintiff has presented a colorable claim of a fraudulent scheme to deregulate the apartment. The Housing Court's findings, upheld by the Appellate Term, noted the Defendants' failure to file registrations from 2008-2014, the predecessor's failure from 1984-2007, and belated/incorrect retroactive filings. These facts were deemed "consistent with a conclusion that Defendants had engaged in a fraudulent scheme to deregulate the subject premises." Plaintiff also alleges reliance on knowingly false representations regarding the apartment's deregulated status. While Defendants cite cases like *310 East 74 LLC v Mirea* ([310 E. 74 LLC v Mirea](#), 226 AD3d 547, 547 [1st Dept 2024]) and *Gassana v DHCR* ([Matter of Gassana v NY State Dept. of Hous. & Community Renewal](#), 226 AD3d 589 [1st Dept 2024]), arguing that the fraud must relate directly to the challenged rent increase and not subsequent acts, the Housing Court's comprehensive findings indicate a continuous, systemic fraudulent scheme to deregulate the entire building, not merely isolated "bad acts". This systemic fraud taints the reliability of any purported base date rent, thus permitting a lookback beyond the four-year period under Regina's fraud exception.

Defendants' argument that the fraud claim is time-barred by CPLR §213 (six-year statute of limitations for fraud) because Plaintiff had knowledge by 2015 is unpersuasive given the ongoing nature of the fraudulent scheme to deregulate, and the unique complexities of rent stabilization law which allows for piercing the lookback period when fraud taints the base date rent. The prior court proceedings confirmed the apartment's rent-stabilized status, but the exact legal rent and overcharge amount were not determined, necessitating the current action. The DHCR's August 2, 2022 Order, which implicitly denied the Owner's attempt to amend the registrations with the deregulated market rents as legal regulated rents, further demonstrates that the legal regulated rent for the apartment is in dispute, in doubt, or not known. This finding by a regulatory agency supports the need for a judicial determination using the default formula, rather than dismissing the Plaintiff's claim based on an unverified market rent.

II. Plaintiff's Cross-Motion for Summary Judgment Should Be Partially Granted.

Summary judgment is appropriate for determining the legal regulated rent using the default formulas set forth in RSC §2522.6 and RSC §2526.1. The prior, binding determinations by the Housing Court and Appellate Term

have established that the apartment was never properly deregulated and the market rents charged were unlawful and unreliable. Where the legal regulated rent is in dispute, in doubt, or not known, or where the legal regulated rent must be fixed, RSC §2522.6 provides the methodology. Given the history of non-registration for decades (1984-2014 by prior owner and Defendants) and the findings of a fraudulent scheme, the methodologies relying on prior registered rents (RSC §2522.6[b][3][i]-[iii]) are unavailing or inappropriate". Therefore, the default formula based on DHCR compiled data or sampling methods (RSC §2522.6[b][3][iv]) is the appropriate course.

Summary judgment should be granted, declaring that Defendants are collaterally estopped from denying that the purported legal regulated rents, including the initial and any applicable base date rents presently registered with DHCR, are unreliable and unlawful. This is a direct and necessary consequence of the prior court rulings establishing the apartment's rent-stabilized status and the impropriety of the deregulated rents. Partial summary judgment should be granted on the plaintiff's third cause of action for statutory damages for rent overcharges, including treble damages and/or interest and attorneys' fees. A factual hearing will be necessary to determine the precise amount of these damages. The plaintiff's overcharge claim, filed in December 2022, is subject to a four-year lookback period for overcharges incurred prior to HSTPA (June 14, 2019). However, post-HSTPA overcharges are eligible for treble damages, and reasonable costs/attorneys' fees are mandated for overcharge proceedings. The question of willfulness for treble damages requires a factual determination, as does the precise calculation of overcharges once the legal regulated rent is established.

Conclusion

For the foregoing reasons, the Court finds that the Defendants have not met their burden for summary judgment, and material issues of fact, as well as clear legal precedent from prior litigation, preclude dismissal of the Plaintiff's Complaint. Conversely, the Plaintiff has established, through collateral estoppel and the demonstrated unreliability of the purported rents, the need for a judicial determination of the legal regulated rent and calculation of overcharges.

ORDERED, that Defendants' motion for summary judgment is DENIED in its entirety; and it is further

ORDERED, that Plaintiff's cross-motion for summary judgment is GRANTED in part as follows:

On the plaintiff's First Cause of Action, it is hereby determined, established, and declared that the monthly amount of the legal regulated rent for the subject premises from the applicable base date to the present date shall be set pursuant to the default formulas set forth in RSC §2522.6(b)(3)(iv) and RSC §2526.1, as lawfully amended pursuant to the Housing Stability and Tenant Protection Act (HSTPA) of 2019.

On the plaintiff's second cause of action, it is hereby declared that defendants are collaterally estopped from denying that the purported legal regulated rents, including the initial regulated rent and any applicable base date rents presently registered with DHCR, are unreliable and unlawful. Finally, the plaintiff is awarded partial summary judgment on her third cause of action for statutory damages for rent overcharges, including treble damages and/or interest and attorneys' fees, in an amount to be determined. A factual hearing shall be set to determine the precise calculation of rent overcharges, treble damages, interest, and attorneys' fees owed to the Plaintiff consistent with this Decision and Order.


20250902163518400440040823C1925D8A4222A6CDDCF6B80F034E

9/2/2025
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE