SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LORI S. SATTLER** **PART** **02M**

Justice

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WEST SIDE MARQUIS LLC

Plaintiff,

- v -

TROY SHEPPARD,

Defendant.

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INDEX NO. 651875/2023

MOTION DATE 11/25/2024

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97

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

In this action seeking declaratory judgment as to the proper rent to be paid by Defendant Troy Sheppard ("Defendant") to Plaintiff West Side Marquis LLC ("Plaintiff"), Plaintiff moves for summary judgment in its favor, while Defendant opposes the motion and cross-moves for summary judgment in his favor. Plaintiff opposes the cross-motion.

Plaintiff is the owner of a residential apartment building located at 70 West 95th Street in Manhattan ("Building"), formerly part of the Mitchell-Lama program. In 2005, the prior owner lawfully left that program and the Building became subject to the Rent Stabilization Law. The prior owner then filed a "U/P application" (*see* Rent Stabilization Code ["RSC"] § 26-513[a]; *KSLM-Columbus Apts., Inc. v N.Y. State Div. of Hous. & Community Renewal*, 5 NY3d 303 [2005]) with the New York State Division of Housing and Community Renewal ("DHCR") to adjust the initial Legal Regulated Rent ("LRR"), which would have resulted in significant increases for the existing tenants, referred to in the papers as "WSM Tenants." Those tenants appeared in the DHCR proceeding and objected to the rents sought. On December 1, 2006, the WSM Tenants and prior owner agreed to what is known as the "WSM Agreement" (NYSCEF

Doc. No. 78), which was then memorialized in an Order issued by the DHCR on December 29, 2006 (NYSCEF Doc. No. 79, "DHCR Order").

In relevant part, the WSM Agreement established a LRR for the Building's units, but provided that the WSM Tenants were responsible for paying a reduced rent, referred to as Actual Collectible Rent or "ACR." Only the WSM Tenants and a group of successor tenants called "ACR Successors" are permitted to pay the reduced ACR. Per the agreement, Plaintiff may collect the LRR from all other subsequent tenants. Qualification as an ACR Successor is clearly defined in Section 3 of the WSM Agreement. A person must be at least 28 years old as of December 1, 2006, must be a child of a WSM Tenant who has lived in their unit for ten consecutive years as of December 1, 2006, and must themselves have lived in the unit for ten consecutive years as of December 1, 2006.

Thirteen years later, the New York State legislature enacted the Housing Stability and Tenant Protection Act of 2019 ("HSTPA"). The legislation went into effect on June 14, 2019, and among other things amended the Rent Stabilization Code to require that tenants entitled to receive a renewal or vacancy lease after the law's effective date may not be charged more than the rent charged to the prior tenant, except "as adjusted by the most recent applicable guidelines increases and any other increases authorized by law" (RSC § 26-511[c][14]).

Defendant's grandmother, Edna Sheppard ("Ms. Sheppard"), was tenant-of-record in Apartment 25F ("Apartment") at the time the Building left the Mitchell-Lama program and she paid ACR pursuant to the WSM Agreement. Renewal leases issued after 2006 contained a rider setting forth both the LRR and the ACR (NYSCEF Doc. No. 80). Ms. Sheppard died on January 31, 2023, at which time she lived in the Apartment with Defendant. Per the renewal lease in effect, the LRR was $2,796.88 and Ms. Sheppard paid ACR of $978.70.

Plaintiff commenced this action seeking judgment declaring that the monthly ACR of $978.70 paid by Ms. Sheppard was personal to her and terminated upon her death; that Defendant is ineligible for ACR succession under the WSM Agreement; that Defendant is eligible as a successor tenant under the Rent Stabilization Law but must pay the LRR of $2,796.88; and that all future renewal leases issued to Defendant are to be issued in accordance with the Rent Stabilization Law (NYSCEF Doc. No. 73). Defendant answered the Complaint and interposed a single affirmative defense that he has the right to continue paying the ACR paid by Ms. Sheppard (NYSCEF Doc. No. 74).

On June 13, 2024, the parties entered into a Stipulation (NYSCEF Doc. No. 85) in which they agreed that Defendant qualifies for succession under the Rent Stabilization Law but is ineligible to be an ACR Successor. The parties further agree that the WSM Agreement and DHCR Order permit Defendant to succeed Ms. Sheppard as tenant-of-record in the Apartment but do not allow him to continue to pay the ACR. Therefore, the sole issue remaining is one of law: whether the HSTPA, which went into effect before Ms. Sheppard died, entitles Defendant to continue paying the ACR of $978.70, or whether he must pay the LRR of $2,796.88 as envisioned by the WSM Agreement. Plaintiff now moves for summary judgment in its favor, and Defendant cross-moves for summary judgment in his favor.

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]).

The WSM Agreement and DHCR Order established the initial LRRs to be charged in the Building (WSM Agreement at 5; DHCR Order at 1). Specifically, the WSM Agreement states that these rents, "as increased by any and all applicable increases" allowed by the Rent Stabilization Law, "shall be legal rents that can be charged to any new tenant who takes possession of any rent stabilized WSM Apartment after the permanent vacatur of the Approved Tenant of record of said apartment . . . " (WSM Agreement at 5). The Agreement further provides:

> [I]t is explicitly agreed that occupants who become successor tenants pursuant to Code §§ 2520.6 and 2523.5(b) shall be responsible to pay the LRR in effect at the time of such succession. Successors shall have no right -- except as explicitly provided for herein -- to pay the ACR -- or any rent other than the LRR-- for any WSM apartment at the time of succession.

(*id.* at 11). The DHCR Order states: "the collectibility [sic] by the Owner of the Legal Regulated Rent is governed by the settlement agreement" (DHCR Order at 1).

The Rent Stabilization Code as amended by the HSTPA provides:

> For any tenant who is subject to a lease on or after the [HSTPA effective date], or is or was entitled to receive a renewal or vacancy lease on or after such date, upon renewal of such lease, the amount of rent for such housing accommodation that may be charged and paid shall be no more than the rent charged to and paid by the tenant prior to that renewal, as adjusted by the most recent applicable guidelines increases and any other increases authorized by law.

(RSC § 26-511[c][14]).

Plaintiff contends that the language "and any other increases authorized by law" includes the increase from ACR to LRR agreed to in the WSM Agreement and authorized by the DHCR Order. Plaintiff notes that the Building lawfully left the Mitchell-Lama program and, rather than requiring the existing tenants to pay the LRR, the prior owners agreed to accept lower rents from

them and a limited group of successor tenants with the express understanding that thereafter tenants would be required to pay the LRR. Plaintiff maintains that, with respect to the Apartment, Ms. Sheppard received her benefit of the bargain insofar as she paid reduced rent for more than fifteen years, and the time to charge the LRR to the subsequent tenant has now come.

Defendant argues that the WSM Agreement and DHCR Order are superseded by the HSTPA, which requires Plaintiff to offer Defendant a lease at the rate paid by Ms. Sheppard. He relies on case law holding that agreements to opt out of the Rent Stabilization Law are unenforceable and argues that landlords doing business in New York City understand that rent regulation is subject to change (citing *Matter of Regina Metro. Co. v New York State Div. of Hous. & Community Renewal*, 35 NY3d 332, 369 [2020] ["no party doing business in a regulated environment like the New York City rental market can expect the RSL to remain static, as we have repeatedly made clear in cases challenging prospective legislation altering the formula for rent increases under prior schemes."]).

While several other cases have been filed between Plaintiff and tenants in the Building involving succession issues, none have required the Supreme Court to determine how the HSTPA impacts an incoming tenant who is not an ACR Successor but is succeeding a WSM Tenant who died after the statute's enactment (*see Jones v Visnauskas*, 2022 NY Slip Op 33532[U] [Sup Ct, NY County 2022] [finding that, in an Article 78 proceeding, the DHCR's determination that a pre-HSTPA successor tenant must pay the LRR was not arbitrary and capricious]; *DeJesus v West Side Marquis, LLC*, 2017 NY Slip Op 32364[U] [Sup Ct, NY County 2017] [pre-HSTPA action finding WSM Agreement is not void as against public policy]; *West Side Marquis LLC v De Jourdan*, 82 Misc 3d 131[A] [App Term, 1st Dept 2024] [reversing finding that successor tenant is entitled to pay ACR and holding HSTPA did not apply because

WSM Tenant died before its enactment]; *West Side Marquis LLC v Moret*, 83 Misc 3d 18 [App Term, 1st Dept 2024] [same]; *West Side Marquis LLC v Maldonado*, 81 Misc 3d 143[A] [App Term 1st Dept 2024] [same]). However, the New York County Housing Court in *West Side Marquis LLC v Dutertre*, Civ Ct, NY County, Aug. 14, 2023, Fang, J., index No. LT-302776-22/NY (NYSCEF Doc. No. 42), found that the HSTPA did not supersede the WSM Agreement and DHCR Order because it "was not intended to re-write a long-standing settlement agreement memorialized as an administrative order" (*id.* at 9).

In *Regina Metro.*, the Court of Appeals addressed the retroactive effect of other provisions of the HSTPA. As part of that analysis, it wrote that a statute has retroactive effect if "'it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed,' thus impacting 'substantive' rights" (35 NY3d at 365, quoting *Landgraf v USI Film Products*, 511 US 244, 278-280 [1994]). It stated that the "'deeply rooted' presumption against retroactivity is based on 'elementary considerations of fairness that dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly'" (*Regina Metro.*, 35 NY3d at 370, quoting *Landgraf*, 511 US at 265). Therefore, a statute's potential retroactive effect must be justified by a "clear expression" of legislative purpose "sufficient to show that the legislature contemplated the retroactive impact on substantive rights and intended the extraordinary result" (*Regina Metro.*, 35 NY3d at 270-271 [internal citations omitted)]).

The Court finds that RSC § 26-511(c)(14) as amended by the HSTPA does not require Plaintiff to charge Defendant the ACR paid by Ms. Sheppard. The catch-all clause in that provision, "and any other increases authorized by law," encompasses the DHCR Order which authorizes Plaintiff to charge LRR to a non-ACR Successor upon vacatur by a WSM Tenant.

This interpretation of the statute is consistent with the analysis set forth in *Regina Metro*. On its face, it is evident that the HSTPA's amendment to RSC § 26-511(c)(14) intended to expand protections for incoming tenants going forward, but the statute does not contain a clear expression that the legislature intended to undercut a long-standing agreement and administrative order issued thirteen years earlier as part of bringing a building into rent regulation.

Defendant further argues that a contrary finding is appropriate because "New York courts have repeatedly declined to enforce voluntary agreements between tenants and landlords that waive protections or benefits of the RSL" (NYSCEF Doc. No. 90, Affirmation in Support of Defendant's Cross-Motion, 9). However, the cases cited by Defendant involved agreements to skirt rent regulation requirements for the parties' mutual gain (*Georgia Props. Inc. v Dalsimer*, 39 AD3d 332 [1st Dept 2007] [agreement to deregulate and sign a two-year office lease for one apartment in exchange for the landlord refraining "in perpetuity" from seeking high income rent deregulation of a second apartment]; *Drucker v Mauro*, 30 AD3d 37 [1st Dept 2006] [agreement settled a DHCR dispute with tenants paying in excess of the legal regulated rent]; *see also, e.g., 390 W. End. Assocs. v Harel*, 298 AD2d 11 [1st Dept 2002] [agreement permitting nonprimary residence in exchange for rent higher than permitted by the RSL]; *Abright v Shapiro*, 214 AD2d 496 [1st Dept 1995] [agreement to evade rent stabilization laws by using a residential space for professional purposes]). In contrast, the WSM Agreement was made as part of the Building's move out of the Mitchell-Lama program to provide relief for the tenants affected by this change. It was then memorialized in a DHCR order which resolved an administrative proceeding commenced as part of the Building's transition into rent regulation. Regardless, the question before the Court is not whether the WSM Agreement is enforceable but whether the HSTPA compels Plaintiff to charge a different rent than that required by the DHCR Order. While the

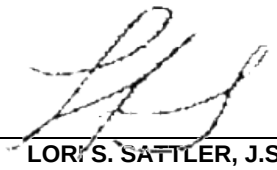
Court recognizes that the rent increase is substantial, the statute lacks a clear expression of an intent to supersede such an order, and therefore the Court must adhere to its terms.

Accordingly, for the reasons set forth herein, it is hereby:

ORDERED that Plaintiff's motion for summary judgment is granted and Defendant's cross-motion for summary judgment is denied; and it is further

ADJUDGED and DECLARED that Defendant is responsible to pay the Legal Regulated Rent for the Apartment in the amount of $2,796.88 per month effective as of February 1, 2023 for the remaining term of the Renewal Lease, plus major capital improvements totaling $18.64 per month, for a total monthly charge of $2,815.52, and all future renewal leases issued to Defendant for the Premises shall be issued in accordance with the Rent Stabilization Law and Rent Stabilization Code, and shall be based upon the current Legal Regulated Rent of $2,796.88 per month plus major capital improvements totaling $18.64 per month, for a total monthly charge of $2,815.52.

This constitutes the Decision and Order of the Court.



9/10/2025
DATE

LORI S. SATTLER, J.S.C.

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