

2143 ACP LLC v James

2025 NY Slip Op 33563(U)

September 26, 2025

Civil Court of the City of New York, New York County

Docket Number: Index No. LT-323304-23/NY

Judge: Daniele China

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART H

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2143 ACP LLC,

Index No.: LT-323304-23/NY

Petitioner,

Seq. No. 001

-against-

DECISION/ORDER

KEONA JAMES, HAROLD JAMES,
Respondents-Tenants,

“JOHN DOE” and “JANE DOE”
Respondents-Undertenants,

165 WEST 127TH STREET
APT. 4B
NEW YORK, NY 10027

Subject Premises.

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Present:

Hon. DANIELE CHINEA
Judge, Housing Court

Recitation, as required by the CPLR § 2219(a), of the papers considered in the review of Respondent’s motion to interpose an amended answer and for leave to conduct discovery.

PAPERS	NYSCEF DOC.
Notice of Motion & Affidavits Annexed.....	9-23
Answering Affidavits.....	27-28
Reply Affidavits.....	29

Upon the foregoing cited papers, the decision and order of the motion is as follows:

Procedural History and Factual Background

Petitioner, 2143 ACP LLC, brought this nonpayment proceeding against Respondents, Keona James and Harold James, allegedly not rent-regulated tenants, seeking arrears from August 2023 through November 2023 (NYSCEF Doc. No. 1).

Respondent, Keona James, then *pro se*, filed an answer (NYSCEF Doc. No. 5), asserting a general denial and conditions/breach of warranty of habitability. Having retained counsel, Respondents then filed this motion (Motion Seq. 001) 1) to interpose an amended answer,

asserting a fatally defective rent demand, rent overcharge, unlawful deregulation, and breach of warranty of habitability, in addition to counterclaims for an abatement and overcharge damages (NYSCEF Doc. No. 19); and 2) for leave to conduct discovery in the form of document production and interrogatories related to the subject premises for the period from 1993 to present (NYSCEF Doc. No. 22-23).

Petitioner filed opposition, asserting that the proposed amended answer contains barebones allegations that cannot support discovery beyond the look-back period.

For the reasons stated below, Respondent's motion is granted solely to the extent outlined.

Discussion

Leave to Amend

When considering a motion for leave to amend a pleading, leave is to be freely granted (CPLR 3025 [b]; N.Y. City Civ. Ct. Act § 909[b]) "absent prejudice or surprise resulting from the proposed amendment, unless the proposed amendment is palpably insufficient or patently devoid of merit" (*Badesch v Fort 710 Assoc., L.P.*, 233 AD3d 604, 604 [1st Dept 2024]).

As discussed below, Respondent's verified proposed amended answer is neither palpably insufficient nor devoid of merit, and leave is granted to interpose the answer (NYSCEF Doc. No. 19), deeming it timely served and filed *nunc pro tunc*.

Discovery in Overcharge Cases

Discovery is permissible by leave of court in a summary proceeding (CPLR 408) to narrow the issues to be presented at trial. It requires the moving party to demonstrate ample need (*Hughes v Lenox Hill Hospital*, 226 AD2d 4 [1st Dept. 1996], *lv to appl den'd* 90 NY2d 829 [1997]; *New York University v Farkas*, 121 Misc 2d 643 [Civ Ct, NY County 1983]). In *Farkas*, the court outlined six factors to be considered in determining ample need for disclosure: (i) whether, in the first instance, the party seeking discovery has asserted facts to establish a cause of action; (ii) whether there is a need to determine information directly related to the cause of action; (iii) whether the requested for disclosure is carefully tailored and is likely to clarify the disputed facts; (iv) whether prejudice will result from the granting of an application of disclosure; (v) whether the prejudice can be diminished or alleviated by an order fashioned by the court for this purpose... and (vi) whether the court in its supervisory role can structure discovery so that pro-se tenants, in particular, will be protected and not adversely affected by a landlord's discovery requests (*Farkas*, 121 Misc 2d at 647; *Georgetown Unsold Shares, LLC v Ledet*, 130 AD3d [2d Dept 2015]).

In a rent overcharge case, however, the *Farkas* factors do not necessarily end the inquiry. Where a proceeding is commenced on or after June 14, 2019, examination of the rent registration

history is now limited to six years prior to the filing of the complaint (9 NYCRR [Rent Stabilization Code] § 2526.7; CPLR 213-a).

To overcome this statutory bar to examination beyond six years, the complaining tenant, must challenge the “reliability of a rent registration statement,” 9 NYCRR § 2526.7[b], with “a colorable claim of fraud,” [. . . through] evidence of a landlord's fraudulent deregulation scheme to remove an apartment from the protections of rent stabilization” (*Matter of Grimm v State of New York Div. of Hous. & Community Renewal Off. of Rent Admin.*, 15 NY3d 358, 367 [2001]). To decide whether there is a “colorable claim of fraud,” courts must find that “tenants do not just make a generalized claim of fraud. They instead advance a colorable claim of fraud within the meaning of *Grimm*—i.e., tenants alleged substantial evidence pointing to the setting of an illegal rent in connection with a stratagem devised by [the landlord] to remove tenants' apartment from the protections of rent stabilization” *Conason v Megan Holding, LLC*, 25 NY3d 1, 16 [2015]. Once a colorable claim is set out, “a court of competent jurisdiction or the state division of housing and community renewal shall issue a determination as to whether the owner knowingly engaged in such fraudulent scheme after a consideration of the totality of the circumstances” (L 2024, ch 95, § 4, Senate Bill 8011/Assembly Bill 8506, amending L 2023, ch 760, Part B, § 2, to add § 2-a).

However, the Appellate Division, First Department, most recently held that a fraud claim was not necessary in a nonpayment case filed after the enactment of the Housing Stability and Tenant Protection Act of 2019 (“HSTPA”), where the tenant’s first lease commenced after that date, and no pre-HSTPA overcharge is alleged (*W. Pierre Assoc. LLC v Harvey*, ___AD3d___, 2025 NY Slip Op 04611 [1st Dept 2025]). Rather, the court held that discovery should be granted where “[t]aken together, the tenant raised a question of fact as to whether the rent history is unreliable” (*id.*).

Further, courts routinely grant discovery where the nature of the deregulation arises from physical alterations to the premises (*see 2701 Grand Ass'n LLC v Morel*, 50 Misc 3d 139[A] [App Term, 1st Dept 2016] [finding ample need for limited discovery on apartment improvements]; *Aimco 322 E. 61st St., LLC v Brosius*, 50 Misc 3d 10 [App Term, 1st Dept 2015] [where triable issues exist as to whether landlord's expenditures for apartment improvements justified high rent deregulation, ample need was shown for limited discovery relating to such improvements]; *150 W. 82nd St. Realty Assoc., LLC v Linde*, 36 Misc 3d 155[A] [App Term, 1st Dept 2012] [where triable issues existed as to whether landlord's expenditures for apartment improvements justified high rent deregulation, ample need was shown for limited discovery]; *Temo Realty LLC v Herrera*, 82 Misc 3d 299 [Civ Ct, Kings County 2023] [granting discovery regarding proof of apartment improvements where Respondents made good faith challenge to the regulatory status]; *57 Elmhurst, LLC v Williams*, 68 Misc 3d 215 [Civ Ct, Queens County 2020] [where Respondents alleged unlawful deregulation, Court granted discovery for the years where landlord claimed it performed individual apartment improvements]).

Separate from any inquiry into overcharge, discovery may be granted to determine the disputed regulatory status of a unit. “Upon such a challenge, “consideration of events beyond the four-year period is permissible if done not for the purpose of calculating an overcharge but rather to determine whether an apartment is regulated,” (*Matter of 150 E. Third St LLC v Ryan*, 201 A.D.3d 582, 583 [1st Dept 2022] quoting *East West Renovating Co. v. N.Y. State Div. of Hous. & Cmty. Renewal*, 16 A.D.3d 166, 167 [1st Dept 2005]; *Matter of AEJ 534 E. 88th, LLC v New York State Div. of Hous. & Community Renewal*, 194 AD3d 464, 469 [1st Dept 2021] citing *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d 332, 351 n 4 [2020]).

Here, like in *Harvey*, 2025 NY Slip Op 04611 [1st Dept 2025], this case was filed after HSTPA, against tenants whose first lease commenced in October 2020, and who allege post-HSTPA overcharge. Unlike in *Harvey*, the petition here claims that the subject apartment was decontrolled—became exempt from rent stabilization—due to high rent vacancy decontrol then in effect (NYSCEF Doc. No. 1 ¶7; see DHCR Fact Sheet #36). Thus, Respondent seeks discovery as to status and overcharge. The proposed timeframe for document discovery is April 1, 1998 to the present (NYSCEF Doc. No. 22 p. 5). The proposed interrogatories include questions about the rent registrations dating back to 1993 (NYSCEF Doc. No. 23 p. 3). NYC Department of Building records offered in support date back to 2000 (NYSCEF Doc. No. 21). Respondent asserts the rent registration history is unreliable with respect to 1) the significant vacancy increases taken in 2000 and 2007; 2) a missing registration in either 2011 or 2012 (confusion arises because of the date of registration indicated); and 3) the apparent deregulation after 2016, when the monthly legal regulated rent registered in 2016 was \$2,035.00, and the deregulation rent threshold was \$2,700.00. The Court finds that “[t]aken together, the tenant raised a question of fact as to whether the rent history is unreliable” (*Harvey*, 2025 NY Slip Op 04611 [1st Dept 2025]; see also *Dunbar Apt. Holdings LLC v Johnson*, 2025 NY Slip Op 51403[U] [Civ Ct, NY County 2025]). The Court finds ample need for discovery exists as to the document demands. However, applying the third *Farkas* factor of careful tailoring of demands to clarify disputed facts, the Court will not allow any of the interrogatories, as numbers 1 through 4 are plainly answered by the petition, and number 5 seeks information from too long ago. Respondent is therefore granted leave to conduct discovery only as to the demands for document production.

Conclusion

Accordingly, it is ORDERED that Respondent’s motion is GRANTED TO THE EXTENT as follows; and it is

ORDERED that Respondent is granted leave to interpose the proposed amended answer (NYSCEF Doc. No. 19), and it is deemed timely served and filed *nunc pro tunc*; and it is

ORDERED that Petitioner shall produce responsive documents, per NYSCEF Doc. No. 22, preserving all objections and supplying a “Jackson affidavit” regarding any documents that could not be located after a diligent search was conducted, no later than forty-five (45) days after service

and filing by Respondent of a copy of this decision and order with a notice of entry upon Petitioner via NYSCEF; and it is

ORDERED that the parties shall comply with the provisions of 22 NYCRR 202.20-f prior to engaging in motion practice regarding any discovery dispute; and

ORDERED that the proceeding is adjourned to December 1, 2025, at 9:30 in Part H, Room 830, for all purposes, including trial assignment.

This constitutes the decision and order of the Court.

Dated: New York, New York
September 26, 2025

HON. DANIELE CHINEA
JUDGE, HOUSING COURT

Hon. Daniele China
Judge, Housing Court