

Hazlett v GC Clark LLC
2026 NY Slip Op 32026(U)
May 8, 2026
Supreme Court, Kings County
Docket Number: Index No. 510721/2022
Judge: Rupert V. Barry
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At an IAS Term, Part 13, of the Supreme Court of the State of New York, held in and for the County of Kings, at the courthouse at 360 Adams Street, Brooklyn, NY on the 8th day of May 2026.

P R E S E N T:

HON. RUPERT V. BARRY, J.S.C.

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ELISE HAZLETT, KATHERYN KELLER and ZACHARY OSTROW, on behalf of themselves and all others similarly situated,

Cal No.:14 (MSQ No.:7)
Cal No.: 15(MSQ No.: 8)
Index No.: 510721/2022

Plaintiff,

-against-

DECISION & ORDER

GC CLARK LLC,

Defendant.

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Recitation, as required by CPLR 2219 (a) of the papers considered in the review of Defendant’s motion for summary judgment [MSQ No.: 7]: (i) pursuant to CPLR 3212 and CPLR 3211, granting Defendant partial summary judgment dismissing the complaint as to the class members and subclass members of apartments formerly occupied by rent controlled tenants; (ii) Pursuant to Real Property Law § 220 (hereafter “RPL”), compelling Plaintiff David Poggi (hereafter “Poggi”) to pay all outstanding rent and/or use and occupancy in the amount of \$38,765.00 through August 31, 2025 without prejudice; (iii) Pursuant to RPL § 220, compelling Plaintiff Samuel Mwila (hereafter “Mwila”) to pay all outstanding rent and/or use and occupancy in the amount of \$35,700.00 through August 31, 2025 without prejudice; (iv) Pursuant to RPL § 220, compelling Poggi and Mwila to pay ongoing rent and/or use and occupancy, pendente lite at the rate of \$2,100.00 and \$1,700.00 per month, respectively, without prejudice; and Plaintiffs’ motion for summary judgment, and motion to dismiss Defendant’s counterclaim [MSQ No.: 8]; NYSCEF Doc.: 110-144; 145 – 247; 248-299; 300 - 322 .

Upon due consideration of the papers filed in these matters, and after oral arguments, this Court’s decision is as follows:

BACKGROUND

This action arises from allegations, brought by Plaintiffs on behalf of themselves and current and former tenants of the building located at 8 Clark Street, Brooklyn, NY (hereafter “the Building”), asserting that their units are entitled to be treated as rent-stabilization units. Plaintiffs also seek rent-stabilized leases, damages and interest. Plaintiffs obtained certification as a class by order of the Hon. Francois A. Rivera, J.S.C., dated October 6, 2022 (NYSCEF Doc. No.: 31).

In the 1980s, each of the units at the Building were rent-regulated, either listed as rent-controlled or rent-stabilized. In 1983, the Building was sold to a business affiliated with the Watchtower Society, which began listing the apartments as temporarily exempt from rent-stabilization because they were being used as religious housing. In 2007, the Building was sold to Defendant. Defendant began renting out units to the public but did not re-register the Building’s apartments.

In 2010, Defendant filed the 2008 registrations for the Building’s units. That 2008 registration represented that the Building’s units had been luxury deregulated, due to “High Rent Vacancy.” Beginning in August 2011, the Building became student housing and again resumed its temporarily exempt status from rent-controlled or rent-stabilization. That temporary exemption ended in 2020, and the apartments again began to be rented to the public.

The Building’s DHCR Rent History shows that in 1984, certain units were listed as rent-controlled (1B, 1C, 1D, 2C, 2E, 2G, 3F, 3G, 4C, 4F, 5F, 5G, 6C, 6E). Units 2E and 3F remain under rent-control, and no claims are made in this action with respect to those units. The remaining units (1A, 1E, 1F, 2A, 2B, 2D, 2F, 3A, 3B, 3C, 3D, 4A, 4D, 4E, 4G, 5A, 5B, 5C, 5D, 5E, 6A, 6B, 6D, 6F, and 6G) were listed as rent-stabilized in 1984.

The parties' disagreement centers on what should have happened to the contested units when the exemption ended in April 2007. Plaintiffs argue that all the contested units should have been considered rent-stabilized units. Defendant contends that all the contested units were properly considered deregulated and that the units were correctly priced at market rate.

This Court finds that when a rent-controlled apartment becomes vacant, it becomes subject to the rent stabilization regime and the first rent is a market rent (*Liggett v Lew Realty, LLC*, 211 AD3d 473, 475 [1st Dept 2022]). Accordingly, once a tenant vacates a rent regulated apartment it is subject to the rent stabilization regime and if the landlord intends to raise the new tenant's rent to market rate, then the landlord becomes obligated to provide the tenant with notice, in writing by certified mail, reciting the initial legal regulated rent for the apartment and informing the tenant of their right to file for an application for adjustment of the initial legal regulated rent within 90 days of the certified mailing (*id.*).

STATUS OF UNITS AFTER EXEMPTION

Rent Stabilization Code (hereafter "RSC") § 2526.1 (a) (3) (iii) provides:

"Where a housing accommodation is vacant or temporarily exempt from regulation pursuant to section 2520.11 of this Title on the base date, the legal regulated rent shall be the prior legal regulated rent for the housing accommodation, the appropriate increase under section 2522.8 of this Title, and if vacated or temporarily exempt for more than one year, as further increased by successive two year guideline increases that could have otherwise been offered during the period of such vacancy or exemption and such other rental adjustments that would have been allowed under this code."

Here, the code explicitly provides that if a housing accommodation becomes empty or temporarily exempt from its rent control or rent stabilization status, the apartment will revert to its prior legal regulated rent.

The status of an apartment post temporarily exempt is that the apartment returns to the marketplace, and in the case of a rent stabilized apartment, it resumes its rent stabilized status. In

the case of rent-controlled apartment, it likewise takes on rent-stabilized status (*see generally AEJ 534 E. 88th, LLC v New York State Div. of Hous. & Community Renewal*, 194 AD3d 464, 470 [1st Dept 2021]).

This Court disagrees with Defendant's contentions that the units become deregulated upon sale. Here, prior to the sale to Watchtower, the subject units were either under rent-control or rent-stabilized status. Consequently, at the end of their temporary exemption, the units should be considered rent-stabilized units and the new tenants offered rent stabilized lease upon their entry.

RENT CALCULATION

Prior to 2019, rent regulation claims were subject to a four year look back period. Courts were not permitted to look back more than four-years prior to the filing of a complaint, unless there was evidence of a fraudulent scheme (*E. Riv. Group, LLC v New York State Div. of Hous. and Community Renewal*, 244 AD3d 851, 853 [2d Dept 2025]).

In the instant case, Plaintiffs desire to use the post 2019, Housing Stability and Tenant Protection Act (hereafter "HSTPA") that would allow this Court and Division of Housing and Community Renewal (hereafter "DHCR") to look beyond the four year limitation. HSTPA only allows a lookback beyond the four years if there is evidence of fraud. Plaintiffs argue that the fraud exception to the four-year look back rule should be applied, because their claims are based on events that occurred after 2019. However, this Court finds that Plaintiffs have failed to allege sufficient fact to demonstrate a fraudulent scheme on the part of the owners and are therefore limited to the four-year look back method to determine the appropriate rent.

Accordingly, it is,

ORDERED that, Defendant's motion for summary judgment dismissing Plaintiffs'

Index No.: 510721/2022

Complaint (MSQ No.: 7) is **DENIED**. It is further

ORDERED that, Defendant's motion pursuant to RPL § 220, compelling Plaintiff David Poggi ("Poggi") to pay all outstanding rent and/or use and occupancy in the amount of \$38,765.00 through August 31, 2025, (MSQ No.: 7) is **DENIED**. It is further

ORDERED that, Defendant's motion pursuant to RPL § 220, compelling Plaintiff Samuel Mwila ("Mwila") to pay all outstanding rent and/or use and occupancy in the amount of \$35,700.00 through August 31, 2025, (MSQ No.: 7) is **DENIED**. It is further

ORDERED that, Defendant's motion to, Pursuant to RPL § 220, compel Poggi and Mwila to pay ongoing rent and/or use and occupancy, pendente lite at the rate of \$2,100.00 and \$1,700.00 per month, respectively, (MSQ No.: 7) is **DENIED**. It is further

ORDERED that, that portion of Plaintiffs' motion for summary judgment requesting that the subject units should be reverted to their prior legal status (MSQ No.: 8) is **GRANTED**, and the subject units legal status is that of rent-stabilized units. It is further

ORDERED that, an Inquest on damages will be held July 13, 2026, at 10:00am, at the courthouse located at 360 Adams Street, Brooklyn, NY 11201, courtroom 276. It is further

ORDERED that, that portion of Plaintiff's motion that seeks to dismiss Defendant's counterclaim for attorney's fees pursuant to CPLR 909, and RPL § 234 (MSQ No.: 7) is **GRANTED**. It is further

ORDERED that, all applications not specifically addressed herein are denied.

This constitutes the decision and order of this Court.

Dated: May 8, , 2026.

R. V. BARRY

HON. RUPERT V. BARRY, J.S.C.