

**Gulivindala v Central Hudson**

2002 NY Slip Op 30134(U)

February 15, 2002

Supreme Court, New York County

Docket Number: 121597/00

Judge: Marilyn Shafer

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

PRESENT: HON. MARILYN SHAFER  
Justice

PART 36

GULIVINDALA,

Plaintiff,

-against-

CENTRAL HUDSON., et. al.,

Defendants.

INDEX NO. 121597/00

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 002

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to 3 were read on this motion for summary judgment:

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____	<div style="text-align: center;"> <b>SCANNED</b>                  FEB 22 2007                  PAPERS NUMBERED                  2                  3             </div>
Answering Affidavits — Exhibits _____	
Replying Affidavits _____	

Cross-Motion:  Yes  No

**Upon the foregoing papers, it is ordered that this motion is granted in part.**

Plaintiffs subleased an apartment located at 574 West End Avenue in Manhattan from the defendants pursuant to a sublease agreement and subsequent extension agreement. Plaintiffs initiated this action seeking a refund of rent overcharges as well as treble damages and attorney's fees.

Sections 9 and 51 of the Omnibus Housing Act (L.1983 c. 403 amending Sec. YY51-6.0 of the Administrative Code of the City of New York [The Rent Stabilization Law]) permits the subletting of rent-stabilized apartments pursuant to Real Property Law Sec. 226-b. As to the rental amount which the sublessor may legally charge, the law provides: "... (a) the rental charged to the subtenant [may] not exceed the stabilized rent plus a ten percent surcharge payable to the tenant if the unit sublet was furnished with the tenant's furniture" (Administrative Code § YY51-6.0[c] [14]). While plaintiffs allege that the apartment was not furnished when they acquired possession, the lease agreement states and defendants' affidavit attests that the apartment was fully furnished.

The record reflects that the monthly base rent payable by the defendants to their landlord

was \$1,172.65. If the apartment was furnished, a ten percent surcharge would be added to this amount to total \$1,289.91 -- the maximum amount of rent legally chargeable by the sublessor to the sublessee. Subtracting this amount from \$3,000.00, which the plaintiffs paid each month from July 1, 1999, through June 30, 2000, it is clear that the plaintiffs were illegally overcharged by \$1,827.35 (or \$1,710.09, if furnished) per month for 12 months for a subtotal rent overcharge of \$21,928.20 (or \$20,521.08, if furnished) during the initial sublease period. The sublease was then extended from July 1, 2000, to August 1, 2001, at an increased monthly rent of \$3,120.00, which the plaintiffs paid from July 1, 2000, through September 30, 2000. Plaintiffs were illegally overcharged by \$1,947.35 each month for 3 months for a subtotal rent overcharge of \$5,842.05 (or \$5,490.27, if furnished) during the sublease extension period. No rent was paid after September 2000, although the defendants had received \$6,000 from the plaintiffs as security and last month's rent. As to the amount of damages, it is clear, at the very minimum, that plaintiffs are entitled to a return from the defendants of the amounts they have been overcharged.

The defendants also seek treble damages. Where a tenant violates the Rent Stabilization Code by exceeding the legal rent, the subtenant will be entitled to treble damages (9 NYCRR §2525.6[b]). The trebling of damages in subletting overcharges is mandatory, not discretionary, under the Omnibus Housing Act (*Kolbert v Clayton*, 127 Misc2d 1036 (City Civ. Ct. 1985)). Defendants argue that their actions were not "wilful" and therefore treble damages should not be awarded (*see Mendelson v Empire Associates Realty Co. Assn.*, 278 AD2d 40 [1st Dept 2000][treble damages must be awarded when there is a finding of rent overcharge and the landlord has not established that the overcharge was not wilful]). This Court finds that the defendants have failed to raise an issue of fact regarding their lack of wilfulness.

It is undisputed that the defendants knew they were charging the plaintiffs an illegal rent. In their defense, they explain that because they were allegedly "good friends" with the plaintiffs (which the plaintiffs deny), who kept "hounding us and pleading with us and begging us" to sublet the apartment, the defendants had to sublet the apartment and, as "a favor" to the plaintiffs, had to let them pay \$3,000 for rent. The defendants contend that they were "fraudulently induced" into entering the lease agreement, which was all part of a scheme by the plaintiffs to build "their nest-egg." Defendants' counsel claims that the defendants do not know what the legal rent is, notwithstanding a written acknowledgment, signed by the defendant Kelly Weldon, on the renewal lease form between the defendants and the landlord on which the legal

Division of Housing and Community Renewal attached to plaintiffs' motion papers. Defendants' claims of fraud and protestations of innocence are utterly without merit.

While the defendants' attorney claims that a refund was offered seven months prior to the filing of this complaint, this claim was made by counsel, not by the defendants. "It is well-settled that the opposing affidavit must be made by one having personal knowledge of the facts and therefore, the [attorney's affirmation] is of no probative value in opposing a motion on summary judgment," *Marinelli v Shifrin*, 260 AD2d 227, 228-229 [1<sup>st</sup> Dept 1999]). Further, the plaintiffs submitted evidence in the form of Ravi Gulivindala's affidavit attesting that the defendants have never offered to return the rental overcharges.

This Court finds that the defendants have failed to produce evidentiary proof in admissible form sufficient to require a trial of the issue of wilfulness (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]), and accordingly, the plaintiff is granted summary judgment on the issue of entitlement to treble damages.

Plaintiff's request for attorney fees is also granted. The Rent Stabilization Code permits an award of reasonable attorneys' fees when a landlord is found to have overcharged a tenant (9 NYCRR §2526.1[d]). While the applicable statute provides for the granting of attorney's fees in the context of proceedings before the Division of Housing and Community Renewal ("DHCR"), defendants have not sufficiently set forth a legal basis to oppose the granting of attorneys fees that would preclude this Court from granting similar relief in this forum. Accordingly, plaintiff is entitled to attorney's fees in an amount to be determined.

For all these reasons, it is ordered that partial summary judgment is granted in favor of the plaintiffs, and this matter set down for a hearing before a special referee to hear and report on the following issues: 1) whether or not the apartment was furnished ; 2) the amount of attorney's fees; and 3) the total amount of damages. It is further ordered that counsel shall serve a copy of this order with notice of entry on the Clerk of the Judicial Support Office (Room 311) for the purpose of arranging a calendar date for hearing and assignment to a referee to hear and report.

This reflects the decision and order of this Court.

Dated: 2/15/02

MARILYN SHAFER  
J.S.C.  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION