

Arnold v 4-6 Bleecker St. LLC
2019 NY Slip Op 33216(U)
October 18, 2019
Supreme Court, New York County
Docket Number: No.158541/2013
Judge: Margaret A. Chan
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

PRESENT: HON.: Margaret Chan
J. JUSTICE

-----X
PETER ARNOLD, ELI LAZARUS, SEAN ROCHA,
And MICHAEL SCHILLER,

Index No.158541/2013

Plaintiffs,

ORDER

-against-

4-6 BLEECKER STREET LLC,
316 BOWERY REALTY CORP.,
WALSAM 316 LLC, WALSAM 316 BOWERY LLC,
WALSAM BLEECKER LLC, LAWBER BOWERY LLC,
and 316 BOWERY NEXT GENERATION LLC,

(Motion Sequences No.12 and 13)

Defendants.

-----X

WHEREAS, on September 18, 2013, Plaintiffs PETER ARNOLD ("Arnold"), ELI LAZARUS ("Lazarus"), SEAN ROCHA ("Rocha") and MICHAEL SCHILLER ("Schiller") (collectively, "Plaintiffs") commenced an action against defendants 4-6 BLEECKER STREET LLC ("Blecker"), 316 BOWERY REALTY CORP. ("316 Bowery") and BAPPLE I LLC a/k/a BAPPLE INC. ("Bapple") seeking, among other things, a declaration that Plaintiffs are entitled to rent-stabilized leases in the building known as and located at 4-6 Blecker Street, New York, New York (the "Building"), and seeking to recover overcharges incurred as a result of the improper deregulation of Plaintiffs' respective apartments, and

WHEREAS, pursuant to an Order, dated August 6, 2015 and entered on August 7, 2015 (NYSCEF Doc. No. 138), by which the Court (Hon. Joan A. Madden, J.S.C.) ratified a certain Stipulation Settling Motion, dated August 4, 2015 (NYSCEF Doc. No. 132), the action was discontinued as against Bapple, and

WHEREAS, by Order dated October 15, 2015 and entered on October 21, 2015 (NYSCEF Doc. No. 140), the Court (Hon. Joan A. Madden, J.S.C.) granted Bleecker's motion (Motion Seq. 005) to add party defendants and amend the caption, and added Walsam 316 LLC, Walsam 316 Bowery LLC, Walsam Bleecker LLC, Lawber Bowery LLC and 316 Bowery Next Generation LLC (collectively, the "Walsam Defendants") (Bleecker, 316 Bowery and the Walsam Defendants, collectively, the "Defendants") as defendants in the action, and amended the caption, accordingly, and

WHEREAS, by Decision/Order and Judgment, dated October 14, 2015 and entered on January 13, 2016 (NYSCEF Doc. No. 168) the Court (Hon. Joan A. Madden, J.S.C.) granted partial summary judgment in favor of Plaintiffs and, inter alia, issued a judgment declaring that Plaintiffs' residential apartments are rent stabilized, and

WHEREAS, by Decision and Order, dated May 31, 2017 and entered on or about June 1, 2017 (NYSCEF Doc. No. 287), the Court (Hon. Joan A. Madden, J.S.C.), inter alia, granted subsequent cross motions by Plaintiffs (Motion. Seq. 005), in part, and held that (i) the "Default Formula" established by the New York State Division of Housing and Community Renewal (the "DHCR") is the correct mechanism for determining the base rents to be used to calculate Plaintiffs' overcharges; (ii) Plaintiffs are entitled to treble damages; and (iii) Plaintiffs are entitled to attorneys' fees incurred in connection with this action, and

WHEREAS, the parties scheduled an inspection of Plaintiffs' respective apartments and other apartments in the Building for the purpose of determining comparability, as required by the Default Formula, and

WHEREAS, by Notice of Motion with supporting Affirmation of Jarred I. Kassenoff, both dated November 16, 2018, with exhibits (NYSCEF Doc. Nos. 417 – 425) (*motion sequence*

No. 12), Plaintiffs Lazarus and Rocha, moved for (a) an order granting summary judgment as to their rent overcharge claims in the amount of \$112,645.14 in favor of Plaintiff Lazarus and in the amount of \$264,018.06 in favor of Plaintiff Rocha, and (b) scheduling a hearing to determine the amount of attorneys' fees Plaintiffs Lazarus and Rocha are entitled to collect, and

WHEREAS, by Notice of Motion with supporting Affirmation of Jonathan Z. Minikes, both dated November 15, 2018, with exhibits (NYSCEF Doc. Nos. 426 – 441) (*motion sequence No: 13*), Plaintiffs Arnold and Schiller, moved for (a) an order granting summary judgment as to their rent overcharge claims in the amount of \$299,992.76 in favor of Plaintiff Arnold and in the amount of \$333,405.72 in favor of Plaintiff Schiller, and (b) scheduling a hearing to determine the amount of attorneys' fees Plaintiffs Arnold and Schiller are entitled to, and

WHEREAS, Defendant Bowery Realty Corp. and the Walsam Defendants untimely filed certain opposition to Plaintiffs Lazarus' and Rocha's motion for summary judgment, by Affirmation in Opposition of Bradley S. Silverbush, dated January 24, 2019 (NYSCEF Doc. No. 475) and Affidavit of Peter Weiss, sworn to January 17, 2019 (NYSCEF Doc. No. 476), and

WHEREAS, Defendant Bowery Realty Corp. and the Walsam Defendants untimely filed certain opposition to Plaintiffs Arnold's and Schiller's motion for summary judgment, by Affirmation In Opposition of Bradley S. Silverbush, dated January 24, 2019 (NYSCEF Docs. Nos. 477 and 478) and Affidavit of Peter Weiss, sworn to January 17, 2019 (NYSCEF Doc. Nos. 479 and 480), and

WHEREAS, Plaintiffs Lazarus and Rocha, by Notice of Rejection, dated January 24, 2019, rejected as untimely Defendants' opposition to their motion for summary judgment (NYSCEF Doc. Nos. 481- 483) and replied to Defendants' opposition, by Affirmation of Jarred I. Kassenoff, dated February 4, 2019 with Exhibits (NYSCEF Doc. Nos. 489 – 496), and

WHEREAS, Plaintiffs Arnold and Schiller replied to Defendants' opposition to their motion for summary judgment, by Affirmation of Jonathan Z. Minikes, dated February 4, 2019 and Affirmation of Corey S. Allen, dated February 4, 2019 with Exhibits (NYSCEF Doc. Nos. 484 – 488), and

WHEREAS, Plaintiffs' respective motions for summary judgment (*motion sequence no. 12 [for Lazarus and Rocha] and motion sequence no. 13 [for Arnold and Schiller]*) were fully submitted to this Court on or about March 29, 2019, and

WHEREAS, by Decision and Order, dated and entered on August 19, 2019, (NYSCEF Doc. No. 530), this Court (Honorable Margaret A. Chan, J.S.C.), inter alia, granted Plaintiffs Lazarus' and Rocha's motion for summary judgment on their rent overcharge claims, finding that they had properly calculated their rent overcharges, interest, and treble damages (\$112,645.14 due to Plaintiff Lazarus and \$264,018.06 due to Plaintiff Rocha) based upon the laws in effect at the time their motion was submitted to the Court, and

WHEREAS, by Decision and Order, dated and entered on August 19, 2019, (NYSCEF Doc. No. 531), this Court (Honorable Margaret A. Chan, J.S.C.), inter alia, granted Plaintiffs Arnold's and Schiller's motion for summary judgment on their rent overcharge claims, finding that they had properly calculated their rent overcharges, interest, and treble damages (\$299,993.76 due to Plaintiff Arnold and \$333,405.72 due to Plaintiff Schiller) based upon the laws in effect at the time their motion was submitted to the Court, and

WHEREAS, by Amended Decision and Order on motion, dated August 19, 2019 and entered on or about August 24, 2019 (NYSCEF Doc. No. 555), the Court (Honorable Margaret A. Chan, J.S.C.), inter alia, corrected a scrivener's error contained in the August 19, 2019 Order concerning Plaintiffs Lazarus' and Rocha's motion for summary judgment, and

WHEREAS, by Amended Decision and Order on motion, dated August 19, 2019 and entered on or about August 24, 2019 (NYSCEF Doc. No. 556), the Court (Honorable Margaret A. Chan, J.S.C.), inter alia, corrected a scrivener's error contained in the August 19, 2019 Order concerning Plaintiffs Arnold's and Schiller's motion for summary judgment, and

WHEREAS, on or about June 14, 2019, and while Plaintiffs' motions for summary judgment was *sub judice* before this Court, the New York State Legislature passed, and the Governor signed into law, the Housing Stability and Tenant Protection Act of 2019 ("HSTPA"), and

WHEREAS, among other things, the HSTPA expanded the period for which rent-stabilized tenants can recover overcharges from four (4) to six (6) years before the filing of an overcharge complaint, expanded the period for which treble damages can be recovered from two (2) to six (6) years before the filing of an overcharge complaint, and removed a prohibition on recovery of interest when treble damages are awarded, and

WHEREAS, by the aforesaid Decisions and Orders, dated and entered August 19, 2019 (NYSCEF Doc. Nos. 530 and 531) as amended by Amended Decision and Order, dated August 19, 2019 and entered August 28, 2019 (NYSCEF Doc. Nos. 555 and 556), this Court took judicial notice of the HSTPA, and held that all Plaintiffs were entitled to recalculate the amounts owed on the overcharge and treble damages amounts, in light of the new statutory framework, and found all Plaintiffs to be entitled to an award of reasonable attorneys' fees, in accordance with this Court's Order, dated May 31, 2017 (Hon. Joan A. Madden, J.S.C.) (NYSCEF Doc. Nos. 287 and 434) and granted Plaintiffs' motion for a hearing on attorneys' fees, and referred the issue of the amount of such attorneys' fees to a Judicial Hearing Officer ("JHO") or Special

Referee to hear and report upon the amount due from Defendants to Plaintiffs for attorneys' fees and costs, in accordance with procedures set forth in said Decisions and Orders, and

WHEREAS, Plaintiffs have recalculated their respective rent overcharge amounts based upon the HSTPA, as set forth in the accompanying new calculations in Exhibit "A" for Plaintiffs Lazarus and Rocha, and Exhibit "B" for Plaintiffs Arnold and Schiller, annexed hereto;

NOW, on joint motion of Newman Ferrara, LLP, counsel for plaintiffs Eli Lazarus and Sean Rocha, and Cutler, Minikes, and Adelman, LLP, counsel for plaintiffs Peter Arnold and Michael Schiller, it is hereby:

~~ORDERED~~ that Plaintiffs' Motion is granted; and it is further ORDERED that Plaintiffs Peter Arnold, Eli Lazarus, Sean Rocha, and Michael Schiller are granted a judgment against all Defendants upon their respective rent overcharge claims in this action; and it is further

ORDERED that Plaintiff Eli Lazarus is awarded a judgment in the sum of \$183,541.78, representing overcharges, treble damages and pre-judgment interest (exclusive of attorneys' fees), plus post-judgment interest at the statutory rate of nine (9%) percent from the date judgment is entered, and Plaintiff Sean Rocha is awarded a judgment in the sum of \$785,115.27, representing overcharges, treble damages and pre-judgment interest (exclusive of attorneys' fees), plus post-judgment interest at the statutory rate of nine (9%) percent from the date judgment is entered, as against all Defendants; and it is further

ORDERED that Plaintiff Peter Arnold is awarded a judgment in the sum of \$594,119.63, representing overcharges, treble damages and pre-judgment interest (exclusive of attorneys' fees), plus post-judgment interest at the statutory rate of nine (9%) percent from the date judgment is entered, and Plaintiff Michael Schiller is awarded a judgment in the sum of

[* 7]

\$517,448.23, representing overcharges, treble damages and pre-judgment interest (exclusive of attorneys' fees), plus post-judgment interest at the statutory rate of nine (9%) percent from the date judgment is entered, as against all Defendants; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

DATED: 10/18/2019



J. S. C.

MARGARET A. CHAN
J.S.C.