Stoddard v 21 Allen St. Corp.
2020 NY Slip Op 32235(U)
July 10, 2020
Supreme Court, New York County
Docket Number: 152641/2019
Judge: W. Franc Perry
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. W. FRANC PERRY** **PART** **IAS MOTION 23EFM**

Justice

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GRANT STODDARD

Plaintiff,

- v -

21 ALLEN STREET CORP.,

Defendant.

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INDEX NO. 152641/2019

MOTION DATE 10/17/2019

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

were read on this motion to/for DISMISSAL.

In this action plaintiff is seeking to recover damages for alleged rent overcharges since September 2013. In motion sequence number 001, defendant 21 Allen Street Corp., seeks an order pursuant to CPLR 3211(a)(5) and (7) dismissing plaintiff's complaint. Plaintiff opposes the motion.

BACKGROUND/CONTENTIONS

Plaintiff Grant Stoddard ("tenant") alleges four causes of action against defendant 21 Allen Street Corp., ("landlord"). In the first cause of action, tenant seeks money damages for alleged rent overcharges above the lawful rent in the amount of $67,526.04, from September 1, 2013 through February, 2019. Tenant also seeks treble damages due to landlord's alleged willful overcharge. (NYSCEF Doc. No. 8, ¶32). In the second cause of action, tenant seeks a declaratory judgment, setting the lawful rent for the subject unit at $639.06 per month. (NYSCEF Doc. No. 8, ¶36). Tenant alleges fraud in the third cause of action, claiming that the landlord engaged in a "massive overcharge scheme", by fraudulently failing to register the subject unit with DHCR for over a decade, failing to offer tenant a proper rent stabilized lease

and renewals thereof, and by allegedly failing to offer tenant a form explaining why the subject unit would be destabilized in violation of the relevant law. (NYSCEF Doc. No. 8, ¶¶38-41). In the fourth cause of action, tenant seeks an award of reasonable legal fees. (Id. at ¶¶43-45).

In lieu of answering the complaint, the landlord seeks an order of dismissal pursuant to CPLR 3211(a)(5), claiming that tenant's claims are barred by the applicable statute of limitations and pursuant to CPLR 3211(a)(7), claiming that the complaint fails to state a cause of action. Landlord maintains that the statute of limitations for a rent overcharge claim is four (4) years as set forth in CPLR §213-a and the Rent Stabilization Law ["RSL"] § 26-516, and Rent Stabilization Code, 9 NYCCRR ["RSC"] §2526.1[a][2]), and that settled caselaw restricts the examination of prior rental history to four years from the date preceding the filing of the complaint, absent the showing of a fraudulent scheme to deregulate the apartment. Landlord also maintains that the newly enacted Housing Stability Tenant Protection Act ("HSTPA"), should not be applied retroactively to the claims asserted herein.

Landlord avers that RSC §2520.6 (f)(1), defines the "base date" for the subject unit as the four years prior to the filing of the complaint, which in this action is March 12, 2015 and maintains that this court may not review the rental history for the subject unit beyond that date as tenant has failed to allege the requisite fraud necessary to extend the four-year look back period. Landlord contends that based on the allegations set forth in the complaint, this action is time barred and otherwise fails to state a claim for relief. Landlord relies on tenant's own admission, that he has been the registered rent stabilized tenant since the inception of his tenancy on September 1, 2013, which was one and a half years prior to the base date, to demonstrate that there has been no deregulation of the apartment, fraudulently or otherwise. Landlord maintains

therefore, that the complaint is time barred and that the rent in effect on March 12, 2015 is the legal base date rent and the complaint must be dismissed.

Tenant contends that examination into the rental history beyond the four-year lookback of the subject unit is warranted based on landlord's alleged failure to register the apartment from 2000 through 2012 as evidenced by the DHCR registration history. (NYSCEF Doc. No. 12). Tenant concedes that the base date for the subject unit is March 12, 2015, but then casually concludes that the rent on the base date is unreliable making an examination into prior years necessary. The only proof provided is tenant's contention that he moved into an apartment that was unrenovated and he is challenging the landlord's performance of renovations by claiming that the renovations have not been done.

Finally, tenant claims that contrary to landlord's contentions, he is not alleging that the subject unit has been deregulated, but rather alleges that the legal regulated rent for the subject unit should be rolled back to $639.06 and that the fraud alleged in the third cause of action is not related to a scheme to deregulate the unit but based on the landlord's alleged fraud in failing to register the unit with DHCR for over a decade and in failing to offer tenant a proper rent stabilized lease for the unit. Tenant maintains that the complaint alleges valid rent overcharge claims and that he is entitled to proceed with discovery to resolve his claims on the merits.

STANDARD OF REVIEW/ANALYSIS

On a motion to dismiss under CPLR 3211(a), the complaint is to be liberally construed (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d,144, 151-152 [2002]). The court must "accept the facts as alleged in the complaint as true, accord [the] plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any

cognizable legal theory" (*Sokol v Leader*, 74 AD3d 1180, 1181 [2010], quoting *Leon v Martinez*, 84 NY2d 83, 87-88 [1994] [citations omitted]).

Reviewing a motion to dismiss pursuant to CPLR 3211(a)(7), the standard is whether the pleading states a cause of cause of action, not whether the proponent of the pleading has a cause of action. (*Sokol v Leader*, 74 AD3d 1180, 1180-81 [2010] [citation omitted]). The "question for us is whether the requisite allegations of any valid cause of action cognizable by the state courts 'can be fairly gathered from all the averments'" (*Foley v D'Agostino*, 21 AD2d 60, 65 [1st Dept 1964], quoting *Condon v Associated Hosp. Serv*., 287 NY 411, 414 [1942]). A "plaintiff may not be penalized for failure to make an evidentiary showing in support of a complaint that states a claim on its face" (*Miglino v Bally Total Fitness of Greater N.Y., Inc*., 20 NY3d 342, 351 [2013]).

The statute of limitations for overcharge claims and the rules governing calculation of an overcharge, were set forth in provisions of the RSL (RSL § 26-516; CPLR 213-a). Before the enactment of the HSTPA, overcharge claims were subject to a four-year statute of limitations that precluded the recovery of overcharges incurred more than four years preceding the imposition of a claim (former RSL § 26-516[a][2]; former CPLR 213-a; see *Conason v Megan Holding LLC*, 25 NY3d 1, 6 N.Y.S.3d 206, 29 N.E.3d 215 [2015]).

The statutes further directed that "no determination of an overcharge and no award or calculation of an award of the amount of an overcharge may be based upon an overcharge having occurred more than four years before" initiation of the claim (former RSL § 26-516[a][2]; see former CPLR 213-a). However, RSL § 26-516 was amended on June 14, 2019 by the HSTPA, and the relevant portion of the statute now provides that: "A complaint under this subdivision may be filed with the [DHCR] or in a court of competent jurisdiction *at any time*, however any recovery

of overcharge penalties shall be limited to the six years preceding the complaint." (RSL § 26-516 (a) (2) (emphasis added); see also CPLR 213-a).

The Court of Appeals has determined that the HSTPA, which permits the entire rent history to be examined, cannot be retroactively applied to overcharges alleged to have occurred before the HSTPA's enactment in 2019 (see *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. and Community Renewal* (NY3d , 2020 NY Slip Op 02127, *9 [2020] ["We conclude that the overcharge calculation amendments (of the HSTPA) cannot be applied retroactively to overcharges that occurred prior to their enactment"]). *Regina* confirms the pre-HSTPA rule, that a tenant seeking to extend the four-year statute of limitations, is required to demonstrate a fraudulent scheme to deregulate the apartment. (*Conason v Megan Holding,* LLC, 25 NY3d 1, 6 N.Y.S.3d 206, 29 N.E.3d 215 [2015*]; Matter of Grimm v State of NY Div of Hous & Community Renewal Off of Rent Admin,* 15 NY3d 358, 938 N.E.2d 924, 912 N.Y.S.2d 491 [2010]; *Thornton v Baron,* 5 NY3d 175, 833 N.E.2d 261, 800 N.Y.S.2d 118 [2005]; *Spatz v Valle,* 63 Misc 3d 134[A], 114 N.Y.S.3d 552, 2019 NY Slip Op 50452[U] [App Term, 1st Dept 2019]).

Here the complaint was filed prior to the HSTPA and based on *Regina,* this court must apply pre-HSTPA law. The tenancy commenced on September 1, 2013 at a rent of $1,600.00 per month. (NYSCEF Doc. No. 8, ¶¶ 1-4). Tenant also concedes that since 2013 the apartment was duly registered with the DHCR. (NYSCEF Doc. No. 12). Tenant does not offer any affirmative evidence of fraud, other than the DHCR rent registration history, which indicates that on the base date, March 12, 2015, the apartment was duly registered and the rent was $1664 per month. As such, "tenant failed to set forth sufficient indicia of fraud to warrant consideration of the rental history beyond the four-year statutory period". (*Matter of Boyd v. New York State Div. of Hous.*

and Community Renewal, 23 NY3d 999, 1000-1001, 992 N.Y.S.2d 764, 16 N.E.3d 1243 [2014], citing *Matter of Grimm*, 15 NY3d at 366-367).

The *Regina* Court explained that:

> Prior to the HSTPA, nothing in the rent stabilization scheme suggested that where an unrecoverable overcharge occurred before the base date, thus resulting in a higher base date rent, the four-year lookback rule operated differently. To the contrary, the limitations provisions — in order to promote repose — precluded consideration of overcharges prior to the recovery period (former RSL § 26-516[a][2]; former CPLR 213-a), and it is clear from *Boyd* that use of a potentially inflated base date rent, flowing from an overcharge predating the limitations and lookback period, was proper in the absence of fraud. Likewise, no exception is justified by the fact that the inflated base date rent in *Roberts* cases resulted from improper deregulation, as opposed to an improperly high increase to a stabilized rent. The RSL makes no such distinction, and there is no indication that, under the pre-HSTPA law, an overcharge resulting from improper (but non-fraudulent) luxury deregulation warranted anything but the application of the standard lookback provisions.

(*Regina Metro. Co., LLC*, 2020 NY Slip Op 02127, at *9).

Noting that it was not necessary to recognize an additional common law exception that would create or increase the amount of overcharge damages to give proper effect to *Roberts*, the Court of Appeals reiterated that "[c]ivil liability is always bounded by the public policy of repose embodied in statutes of limitations." (*Regina Metro. Co., LLC*, 2020 NY Slip Op 02127, at *7, citing, *Ajdler v Province of Mendoza*, 33 NY3d 120, 130, 99 N.Y.S.3d 749, 123 N.E.3d 233 n 6 [2019] ["(T)he (s)tatute of (l)imitations . . . expresses a societal interest or public policy of giving repose to human affairs"], quoting *John. J. Kassner & Co. v City of New York*, 46 NY2d 544, 550, 389 N.E.2d 99, 415 N.Y.S.2d 785 [1979]). The Court concluded that "[o]vercharge liability under the RSL is no different." (*id.)*.

Based on the tenants' failure to allege a colorable claim of fraud, there is no basis here for considering the subject apartment's rental history more than four years before the commencement of the overcharge claim. (see *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal,* 3d , 2020 NY Slip Op 02127 [2020]; CPLR 213-a). Given the lack

of evidence that the landlord engaged in fraud, tenant's claims for rent overcharge and to calculate the legal regulated rent of his unit are subject to a four-year look back period. (see, *Matter of Aurora Assoc. LLC v Locatelli*, 2020 NY Slip Op 03267 * [1st Dept 2020]; *Corcoran v Narrows Bayview Co., LLC*, 183 A.D.3d 511 [1st Dept 2020]). Where, as here, the tenant received a rent stabilized lease and the landlord duly registered the subject unit with DHCR more than four years before any rent overcharge complaint was filed, the complaint must be dismissed as barred by the statute of limitations. Accordingly, it is hereby

ORDERED that the motion of defendant 21 Allen Street Corp., to dismiss the complaint is granted and the complaint is dismissed in its entirety, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

7/10/2020
DATE

W. FRANC PERRY, J.S.C.

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