SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **IAS MOTION 14**

Justice

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HAIM ZITMAN,

Plaintiff,

- v -

SUTTON LLC,STELLAR SUTTON LLC

Defendant.

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INDEX NO. 652015/2018

MOTION DATE N/A

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65

were read on this motion to/for CROSS MOTION.

The motion for summary judgment by defendant Stellar Sutton LLC is granted.

Background

This rent overcharge action arises out of plaintiff's tenancy at 320 East 52nd Street in Manhattan. Plaintiff has been residing there more than thirty years, having moved into the subject apartment in February 1988. At that time, defendant Sutton LLC ("Sutton") was the owner of the building (plaintiff previously discontinued the action against this defendant). Defendant Stellar Sutton LLC ("Stellar") acquired the property fifteen years ago, in 2005.

Plaintiff alleges that he has been charged unlawful rent every year since he began living in the apartment. Plaintiff claims that the registration statements for his apartment indicate that the tenant who lived in the apartment prior to June 1, 1985 paid $704.00 per month and the tenant after that (who immediately preceded plaintiff) paid $1,600 per month. Plaintiff argues that this 200 percent increase demonstrates that every lease provided to him starting in 1988 was illegal.

The Court previously granted Stellar's motion to dismiss (NYSCEF Doc. No. 23). On appeal, the Appellate Division, First Department reversed and found that "Plaintiff's claims for rent overcharges during the six years preceding the commencement of this action, based chiefly on an allegedly improper rent increase in about 1986, are timely. Although the complaint was dismissed on September 6, 2018, the action remained 'pending' for purposes of retroactive application of CPLR 231-a during the pendency of the instant appeal" (*Zitman v Sutton LLC*, 177 AD3d 565, 110 NYS2d 853 (Mem) [1st Dept 2019] [citations omitted]).

Stellar now moves for summary judgment and points out that after this Court granted the motion to dismiss, the Housing Stability and Tenant Protection Act ("HSTPA") was passed in June 2019 which compelled the First Department to reverse this Court's decision. Stellar claims that a subsequent Court of Appeals decision found that the HSTPA cannot be applied retroactively to overcharge claims that were filed prior to June 14, 2019. It concludes that because this rent overcharge predates the June 2019 cutoff and there is no basis to invoke the lookback exception to the four-year rule, this case should be dismissed.

In opposition, plaintiff emphasizes that this case involves fraud and therefore, the Court can look back more than four years. He insists the rental history demonstrates that the dramatic increases in rent indicate an intentional effort to deregulate a rent stabilized apartment. Plaintiff points to filing with DHCR that allegedly shows that Stellar's predecessor claimed it charged plaintiff $1,200 in 1988 but did not inform plaintiff that he had received a preferential lease nor was he provided with a rent stabilization rider.

In reply, Stellar insists that plaintiff wants this Court to look back more than 30 years which is not permitted under the applicable statutory scheme. Stellar also notes that the premises

are, and always has been, subject to rent stabilization meaning that this is not a case about improper deregulation.

Discussion

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324, 508 NYS2d 923 [1986]).

The Court of Appeals concluded "that the overcharge calculation amendments cannot be applied retroactively to overcharges that occurred prior to their enactment" (*Regina Metro. Co., LLC v New York State Div. of Hous. and Community Renewal*, 2020 WL 1557900 *10, 2020 NY Slip Op 02127 [2020]). The Court added that "Here, if applied to past conduct, the amendments to the statute of limitations, overcharge calculation and damages provisions in Part F of the HSTPA would impose new liability and thus have a "retroactive effect" – altering substantive rights in multiple ways."

"The statute of limitations with respect to overcharge claims has been treated as running backward from the date of initiation of the claim, previously permitting recovery of overcharges occurring only in each of the four years preceding the complaint. Thus, the relevant illegal conduct for which a tenant can recover is the overcharge committed in any given year during the recovery period. Expansion of the limitations period from four to six years clearly has a

retroactive effect because it permits recovery for nonfraudulent conduct occurring during an additional two years preceding the former recovery period – conduct that was beyond challenge under the prior law" (*id*. at *12).

Moreover, the Court of Appeals observed that "by changing the overcharge calculation methodology to enable review of any illegal rent increase in the history of the apartment, [it] would also substantially alter the nature of the liability by resurrecting nonfraudulent overcharges that initially occurred more than four years prior to the complaint but continue to impact the calculation of the current rent" (*id*. at *14).

Based on *Regina*, the provisions of the HSTPA do not apply retroactively to the claims at issue here. The question, then, is whether plaintiff has stated an issue of fact with respect to Stellar's (or its predecessor's) purportedly fraudulent scheme to deregulate the apartment. "An increase in rent, standing alone, does not establish a fraudulent scheme to evade rent stabilization" (*Regina Metropolitan Co., LLC v New York State Div. of Hous. & Community Renewal*, 2018 NY SlipOp 05797, *3 [1st Dept 2018]). "[A] mere allegation of fraud alone, without more, will not be sufficient to . . . inquire further. What is required is evidence of a landlord's fraudulent deregulation scheme to remove an apartment from the protections of rent stabilization" (*Grimm v State Div. of Hous. & Community Renewal Office of Rent Admin.*, 15 NY3d 358, 367, 912 NYS2d 491 [2010]).

Here, plaintiff seeks to recover for an overcharge despite the fact that he has lived in the apartment since 1988 and his claim that the improper rent increase took place in about 1986. Plaintiff claims he didn't discover the alleged fraud until 2016. But because the HSTPA does not have retroactive effect, the Court must apply the four-year look back period and that time period does not indicate any indicia of fraud that would compel the Court to travel back to the 1980s as

plaintiff requests. As the Court noted in its previous decision, the purpose of the lookback period was to prevent situations such as the one present here: where a tenant makes a claim based on alleged misconduct that took place over 30 years ago and with a prior landlord.

Plaintiff failed to sufficiently articulate any behavior that occurred during the lookback period that might implicate fraud. Instead, plaintiff referenced filings with the DCHR from 1988-1991 (NYSCEF Doc. No. 60, ¶ 10). Although plaintiff offers conclusory assertions that the landlord was unscrupulous and engaged in a fraudulent scheme, there is nothing to indicate that anything occurred during the relevant time period that could justify disregarding the lookback period.

Accordingly, it is hereby

ORDERED that the motion for summary judgment by Stellar Sutton LLC is granted and the Clerk is directed to enter judgment when practicable along with costs and disbursement after presentation of proper papers therefor.

9/3/2020
DATE

ARLENE P. BLUTH, 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