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

DANA MCDONALD,

Plaintiff,

-against-

DECISION and ORDER
Index no. 152553/2016
Motion nos. 004 and 005

JBAM TRG SPRING, LLC,

Defendant.

The Court has considered efiled documents 1, 193 through 207, 210 through 225 and 227.

Defendant Jbam Trg Spring, LLC has brought two motions. At the hearing in mid-September earlier this year, the parties agreed to merge the remaining portion of motion 004 into motion 005. That portion is for Dana McDonald's failure to pay the use and occupancy (hereinafter "rent") for March through August of 2020. Plaintiff vacated the apartment on August 31, 2020, rendering moot the application for ejectment that was part of motion 004.

Ms. McDonald had sued for rent overcharges on two apartments she occupied in defendant's building at 55 Spring Street in Manhattan. On July 29, 2020, this Court held that there had been rent overcharges for Ms. McDonald's first apartment, and those were satisfied with defendant's payment of $45,709.15 (by check, dated March 9, 2018, document 176).

In the decision,[1] the Court found that the second apartment had been properly deregulated to market rate by the time Ms. McDonald took occupancy on April 1, 2014, which was for a one-year term through March 31, 2015 at a rent of $2,500 a month, with a preferential rent rider of $2,300. On February 19, 2015, Ms. McDonald signed a second one-year lease, beginning April 1, 2015 with a monthly rent of $3,500 - - and no preferential reduction.

Motion 005 and the cross-motion thereto are for re-argument or renewal of the Court's determinations on July 29, namely that: plaintiff was not obligated to pay defendant the difference of the market rate and the stipulated rate through this lawsuit's pendency; the March 9, 2018 payment resolved the overcharge issue on Ms. McDonald's initial apartment (unit 6); and defendant did not commit fraud. In addition, the failure to pay rent for six months through August of 2020 will be dealt with, and the issue of attorneys' fees remains open.

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[1] 68 Misc 3d 1206 (A).

Market rate since the June 2016 stipulation

This suit was filed on March 24, 2016, and a stipulation between Ms. McDonald and Jbam Trg Spring was entered into on June 30, 2016, that McDonald would pay monthly rent of $2,300 "pending further agreement by parties or court order [and is] without prejudice to the rights and claims of all parties in the action . . ." (document 198).

The Court had stated in its prior Order that it found no comparable case; nor was any submitted. In its affirmation in support of motion number 005, defendant cites *Rose Assoc. v Lenox Hill Hosp.*, 262 AD2d 68, 1st Dept, *lv denied* 94 NY2d 838 and *245 Owner, LLC v Mills*, 58 Misc 3d 1224 (A), Supreme Court, New York County. The Rose Associates case involved multiple leases whose rent-stabilized status was overturned when the Court of Appeals declared unconstitutional Chapter 940 of the Laws of 1984 (*Manocherian v Lenox Hill Hosp.*, 84 NY2d 385, *cert denied* 514 US 1109). In *Mills*, the partes entered into stipulations "several times" during a holdover proceeding.

As discussed at oral argument, courts have used strong language to enforce stipulations in landlord-tenant disputes. The Appellate Term of the First Department in *1050 Tenants Corp. v Lapidus*, 16 Misc3d 70 cited the First Department's *1420 Concourse Corp v Cruz*, 135 AD2d 371, *app dismissed* 73 NY2d 868, a case in which the stipulation inured to the benefit of the tenant:

> [W]here the parties, both represented by counsel, have freely entered into a stipulation of settlement in open court, such stipulation will generally be enforced unless public policy is affronted, i.e., where judicial enforcement of such an agreement would be the approval of a transaction which is inherently vicious, wicked or immoral, and shocking to the prevailing moral sense."

The facts In *1050 Tenants Corp.* were more complex than we have here:

> [The] backdrop [is of] extensive litigation history between the parties and tenants' "unjustified withholding of maintenance and other payments for extensive periods of time . . . which compelled the cooperative to bring multiple costly nonpayment proceedings" The stipulation was designed to ensure that before tenants withheld maintenance, landlord received actual, verifiable notice of any conditions alleged to constitute a breach of the warranty of habitability and a real opportunity to remedy the condition, while reserving tenants' right to prompt repairs in the event of actual defects. 16 Misc 3d at 73.

Whether Ms. McDonald owes Jbam Trg Spring an additional $1,200 per month for the period of the stipulation is on the cusp, but there is not quite enough for the Court to disturb its prior denial thereof. [2]

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[2] It is not necessary to reach plaintiff's argument that the June 30, 2016 stipulation was not So-Ordered, and thus could not be the subject of a re-argument motion.

Rent overcharges for the first apartment (unit 6)

Defendant argues that Dana McDonald was not improperly overcharged $45,709.15 (including interest), that the overcharge amount was only $696.00, citing, as did this Court, *Regina Metropolitan Co., LLC v New York State Division of Housing and Community Renewal*, 35 NY3d 332. Decided by the Court of Appeals on April 2, 2020; referring back to *Regina* is not grist for a CPLR 2221 motion.[3] Similarly plaintiff does not advance grounds to reconsider the ruling on this unit, which was based on a four-year look-back period.

Failure to pay any rent for six months in 2020

Dana McDonald paid no rent for the months of March 2020[4] through August 2020. Defendant is entitled to such amount; six months at the stipulated rate of $2,300 for a total of $13,800. Plaintiff maintains that such is not before the Court,[5] but, among other things, it was specifically dealt with when motion 004 was merged into motion 005 during oral argument.

Fraud

Plaintiff asks the Court to revisit its finding that there was no fraud committed by Jbam Trg Spring, LLC. The issue was dealt with sufficiently in the July 29 decision, and is not subject to re-argument or renewal. Plaintiff had argued that Justice Carmen St. George's statement earlier on in this matter that "there is a colorable claim of fraud" which requires further inquiry is preclusively binding on this Court.[6]

Attorneys' fees

This Court addressed attorneys' fees in the July 29, 2020 Order as follows:

> A prevailing tenant has the right to attorneys' fees where the lease grants a comparable right to the landlord (Real Property Law § 234; *Graham Court Owner's Corp. v Taylor*, 24 NY3d 742). Plaintiff has not prevailed with respect to unit 4. As for unit 6, defendant submits a case in which the landlord, awarded $62,000 and the tenant $4,800, was, not surprisingly, deemed the prevailing party (*Peachy v. Rosenzweig*, 215 AD2d 301, 1st Dept). Our case is obviously more balanced, although the First Department a few years later, in upholding the legal fees awarded the landlord, described it as having prevailed upon the "central litigated issues" (*501 East 87th St. Realty Co., LLC v. Ole Pa Enterprises*, 304 AD2d 310, 311 [1st Dept]). [68 Misc 3d 1206(A), *4].

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[3] The Court had rejected the defendant's argument that the $45,709.15 included 14 months that it should not have (see footnote 1 of 68 Misc 3d 1206 (A)).

[4] See the affidavit of managing agent Meyer Appel (document 194).

[5] Paragraph 273 of plaintiff's Amended Affirmation in Opposition to Defendant's Motion and In Support of the Cross-Motion (document 227).

[6] McDonald v Jbam Trg Spring, LLC, 58 Misc 3d 1213 (A),*4. On this issue, see *Sandlow v 2305 Riverside Corp.*, 2020 WL 5101545,*2, Supreme Court, New York County.

The Court then asked that plaintiff's counsel submit his ledger showing the fees allocable to unit 6 (to the extent feasible), and a hearing would be scheduled. For its part, defendant's counsel contends that it should be regarded as the prevailing party and also seeks its fees.

Justice St. George did not find that the rent stabilized status of unit 6 would transfer to unit 4, which could well be viewed as a central issue here. As plaintiff raised during oral argument (see paragraph 74 of the verified complaint), the question of whether defendant violated the warrant of habitability remains open, which could well affect the balance in determining attorney's fees.

NOW therefore, in view of the foregoing,

IT IS ORDERED, that defendant's motions nos. 004 and 005 are denied except that: defendant is awarded $13,800 (with interest from August 31, 2020) and the denial of attorneys' fees is with leave to renew;

IT IS FURTHER ORDERED, that the award of $13,800 shall be stayed pending the final resolution of this case; and

IT IS FURTHER ORDERED, that plaintiff's cross-motion is denied, except that the denial of attorneys' fees is with leave to renew.

ENTER November 30, 2020

ALAN C. MARIN
JUSTICE OF THE SUPREME COURT

Alan C. Marin J.S.C.