326 Starr, LLC v Martinez
2020 NY Slip Op 34608(U)
December 15, 2020
Civil Court of the City of New York, Kings County
Docket Number: L&T 82348/19-KI
Judge: Zhuo Wang
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CIVIL COURT OF THE CITY OF NEW YORK
HOUSING PART, COUNTY OF KINGS

326 Starr, LLC,

Petitioner,

- against -

Christopher Martinez and Alexander Prose,

Respondents.

L&T 82348/19-KI

DECISION & ORDER
Mot Seq: 1

Zhuo Wang, J.:

Recitation pursuant to CPLR § 2219 (a) of the papers considered in the review of this motion:

Papers	Numbered
Notice of Motion, Affirmation, & Exhibit	1
Opposition Papers, Affirmation, & Exhibits	2

In this nonpayment proceeding, Respondents Christopher Martinez and Alexander Prose (collectively, Respondents) move pursuant to CPLR Rules 3211 (a) (1) and (7) and RPAPL Section 741 (4) to dismiss the petition for failure to state a cause of action. Petitioner 326 Starr LLC (Petitioner) opposes the motion.

Background

Petitioner is the owner of the premises located at 326 Starr Street, apt 3-F in Brooklyn. In 2018, Petitioner and Respondents entered into a lease for the subject premises at a monthly rent of $2,900.00.

It is undisputed that the legal rent for the prior tenancy was $1,154.51. It is also undisputed that at the time the prior tenant vacated in 2017, the unit was rent-stabilized.

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Petitioner alleges that it made individual apartment improvements (IAIs) to the subject apartment after the apartment became vacant in 2017 but before Respondents moved in. Petitioner claims that after these alleged improvements the legal regulated rent increased to $2,900.

In October 2018, Petitioner commenced this nonpayment proceeding against Respondents. Although the petition alleges that the subject premises is subject to rent-stabilization, Petitioner now claims that the apartment was properly deregulated under Rent Stabilization Law (Administrative Code of the City of New York) § 26-504.2 (2) (a). Indeed, Petitioner by way of an annexed affidavit from its member, Michiel Schuit, avers that the "premises are deregulated as Petitioner has made significant improvements to the unit and rented them prior to the enactment of the [HSTPA] of 2019" (Schuit aff at ¶ 2). Accepting as true Petitioner's representation, Respondents now move to dismiss the petition for failure to state a cause of action.

Arguments

On their motion, Respondents argue that the petition fails to state a cause of action pursuant to CPLR R. 3211 (a) (7) because the subject premises was never properly deregulated. Namely, Respondents argue that the applicable statute, the Rent Act of 2015, amended RSL § 26-504.2 (a) to permit deregulation only if the legal regulated rent met the threshold of $2,700 *at the time* the vacancy occurred. Because the legal rent did not

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exceed the threshold at the time the prior tenant vacated, the unit remained rent stabilized.

In opposition, Petitioner argues that the Rent Act of 2015 – like prior statutes amending RSL § 26-504.2 (a) – permits high-rent deregulation *after* the vacancy (through IAI's and other lawful increases) even where the legal rent at the time of the vacancy did not meet the deregulation threshold. In support, Petitioner primarily relies on *Altman v. 285 West Fourth LLC* (31 NY3d 178 [2019]) and *233 E. 5th St., LLC v Smith* (162 AD3d 600, 601 [1st Dept 2018]), neither of which interpreted the Rent Act of 2015 but rather addressed the Rent Regulation Reform Act of 1997, as amended by the Rent Act of 2011. Nevertheless, Petitioner contends that, like the 1997 and 2011 Acts, the 2015 Act should be similarly read to permit deregulation during the post-vacancy period. To that end, Petitioner asserts that over $80,000.00 in improvements were made to the apartment after the 2017 vacatur and relies on copies of permits, cancelled checks, contracts and invoices annexed to the opposition papers.

Discussion

"[I]n considering a motion to dismiss pursuant to CPLR R. 3211 (a) (7) [for failure to state a claim], the court should accept the facts as alleged in the [petition] as true, accord [petitioner] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*see Tirpack v 125 N. 10, LLC*, 130 AD3d 917, 918 [2d Dept 2015] citing *Leon v Martinez*, 84 NY2d 83, 88 [1994]). Where

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a pure legal issue is presented calling for statutory interpretation, however, a determination of this issue may be made on the merits (*see Gessin v Throne-Holst*, 134 AD3d 31, 36 [2d Dept 2015]).

"[W]hen presented with a question of statutory interpretation, [the court's] primary consideration is to ascertain and give effect to the intention of the [l]egislature" (*Kuzmich v 50 Murray St. Acquisition LLC*, 34 NY3d 84, 91 [2019], rearg denied, 33 NY3d 1135 [2019], and cert denied, 140 S Ct 904 [2020]). "Inasmuch as the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof" (*id*). "Words of ordinary import in a statute are to be given their usual and commonly understood meaning, unless it is clear from the statutory language that a different meaning was intended" (*Matter of Drew v Schenectady County*, 88 NY2d 242, 246 [1996]).

Until the passage of the Housing Stability and Tenant Protection Act of 2019, high-rent vacancy (or luxury) deregulation existed for over two decades as one of several methods by which owners removed rent stabilized apartments from the ambit of rent regulation. Under this scheme, which was first enacted through the passage of The Rent Reform Regulation Act of 1993 (L. 1993, ch. 253), rent stabilized apartments were excluded from coverage if the legal monthly rent reached a "threshold" amount (*see* former RSL § 26-504.2[a]). Successive statutes have periodically modified § 26-504.2 (a) to increase the

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threshold and to change the circumstances when high-rent deregulation can be achieved, until the HSTPA eliminated this scheme in 2019.

Under The Rent Reform Regulation Act of 1997 (L 1997, ch 116), high-rent deregulation was permitted for:

> any housing accommodation which becomes vacant on or after April first, nineteen hundred ninety-seven and where at the time the tenant vacated such housing accommodation the legal regulated rent was two thousand dollars or more per month, or, any housing accommodation which is or becomes vacant on or after the effective date of the rent regulation reform act of 1997 with a legal regulated rent of two thousand dollars or more per month(*see* RSL former § 26-504.2[a]).

For nearly 15 years, the Court of Appeals had read the 1997 Act to permit high-rent deregulation if the legal regulated rent reached the threshold (1) at the time of the prior tenant's vacatur from the unit, or (2) during the post-vacancy period (*see e.g. Jemrock Realty Co., LLC v Krugman*, 13 NY3d 924, 926 [2010]). Thus, even if the legal regulated rent did not meet the threshold at the time a tenant vacated the rent-stabilized unit, the language of RSL § 26-504.2 (a), as amended by the 1997 Act, permitted deregulation where post-vacancy increases (*e.g.* individual apartment increases, major capital improvements, vacancy increases, etc.) raised the legal rent above the threshold amount.

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That longstanding reading was challenged in *Altman v. 285 West Fourth LLC* (31 NY3d 178 [2019]). In interpreting the 1997 Act, as amended by the Rent Act of 2011,[1] the *Altman* court first noted that the "plain language" of the statute contains two clauses that permit high rent deregulation when the threshold is reached, *i.e.* "at the time the tenant vacated" and when the housing accommodation "is or becomes vacant." If the first clause permits deregulation when the threshold is met when the tenant vacates, the *Altman* court concluded that "it follows [under the second clause that] the threshold can also be met *after* the tenant vacate[s]." Thus, for vacancies between 1997 and 2011, *Altman* holds that deregulation after the vacancy is permitted even though the legal regulated rent did not reach the applicable threshold at the time of vacatur. It bears noting that, although the Court in *Altman* did not expressly address the phrase "becomes vacant" in the first clause of the 1997 Act, the Court must have implicitly equated its meaning to "at the time of vacatur" because *Altman* held that the second clause – "after the vacancy" – must necessarily mean something different from the first.

The first substantive amendment to RSL § 26-504.2 (a) came with the enactment of the aforementioned Rent Act of 2011. Unlike the 1997 Act, which *Altman* read as containing two clauses, the 2011 Act defined high-rent deregulation in a single clause for vacancies that occurred *after* 2011. Namely, the 2011 Act provided that excluded from rent-stabilization was:

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[1] The 2011 Act left the statutory language of the 1997 Act essentially unchanged.

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> any housing accommodation with a legal regulated rent of two thousand five hundred dollars or more per month at any time on or after the effective date of the rent act of 2011, which is or becomes vacant on or after such effective date (*see* former RSL § 26-504[2][a] [italics added]).

In *1650 Realty Assoc., LLC v Ovadiah*, 65 Misc3d 24 (App Term, 2d Dept 2019), this Appellate Term held that the 2011 Act similarly permits deregulation if the legal regulated rent meets the applicable threshold ($2,500) both at the moment of vacancy or during the post-vacancy period. In *Ovadiah*, the owner claimed it made improvements to a rent-stabilized apartment after a vacatur in 2014, which raised the legal regulated rent above the threshold at the time. The *Ovadiah* court compared the language of the 2011 Act with the second clause of the 1997 Act but found no material difference between them. Thus, the court held that the owner in *Ovadiah* was permitted to deregulate during the post-vacancy period.

Four years after the Rent Act of 2011 and four years before the Legislature completely abolished high-rent deregulation under the HSTPA, the Legislature enacted the Rent Act of 2015. The Rent Act of 2015 permits deregulation for:

> any housing accommodation that *becomes* vacant on or after the effective date of the rent act of 2015, where such legal regulated rent *was* two thousand seven hundred dollars or more, and as further adjusted by this section (*see* former RSL § 26-504[2][2] [italics added]).

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The issue before this Court is whether Petitioner was permitted by the plain language of the Rent Act of 2015 to deregulate the apartment during the post-vacancy period. Surprisingly, there appears to be no appellate opinion and only one reported lower court decision interpreting the 2015 Act. Last year, in *People's Home Improvement LLC v Kindig*, the Housing Court (Kenneth Barany, J.) interpreted the language of the Rent Act of 2015 to preclude the option of deregulating during the vacancy period. Specifically, the *Kindig* court noted that, while prior legislation had two means by which to deregulate, the 2015 Act "fails to contain the two different clauses referred to in *Altman*." Utilizing the maxim *inclusio unius est exclusio alterius* ("the inclusion of one is to the exclusion of the other"), the *Kindig* court construed the absence of a second clause in the 2015 Act to permit high-rent deregulation only if the legal regulated rent reached the threshold *at the time* the prior tenant vacated.

Likewise, this Court also interprets RSL § 26-504.2 (a), as amended by the Rent Act of 2015, to preclude high-rent deregulation during the post-vacancy period, albeit for a slightly different reason than *Kindig*. Namely, the interpretation that the 2015 Act permits deregulation only if the threshold was met at the time the vacancy occurs gives effect to the plain language of the statute as interpreted by controlling precedent.

Analysis of the meaning of the Rent Act of 2015 begins, of course, with its text: for any vacancy that occurs after the effective date of the Act, excluded from rent stabilization is any housing accommodation (1) that "*becomes* vacant" and (2) "where such legal

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regulated rent *was* $2,700 or more." As to the first phrase ("becomes vacant"), the definition of "becomes" is to "pass from a previous state or condition" or "take on a new role, essence, or nature" (*see also* Webster's Third New International Dictionary of the English Language 195 [1963]). Thus, for vacancies between the effective dates of the Rent Act of 2015 and the HSTPA, a housing accommodation is eligible for high-rent deregulation when it passed from a state of being non-vacant to vacant. To give full effect to the word, "becomes", housing accommodations that reach the threshold after the transition to vacancy should, by definition, be excluded from the ambit of the statute.[2]

Not only is the above interpretation the most natural reading of the phrase "becomes vacant," but this exact phrase is mirrored in the first clause of the 1997 Act ("any housing accommodation which *becomes vacant* . . . and where at the time the tenant vacated . . ."). As discussed above, in order to reach its conclusion, *Altman* necessarily equated "becomes vacant" with "at the time of vacatur". Because the sole reference to vacatur in the 2015 Act is identical to the statutory language of the 1997 Act, which *Altman*

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[2] This Court is mindful that the Court of Appeals has, for an altogether different statute, defined the word "become" to include not only a transition between two states, but also "achieving . . . a status already attained" (*compare Roberts v Tishman Speyer Properties*, L.P., 13 NY3d 270, 284-286 [2009]). *Roberts* is not the final word on this issue and its judicial gloss to the dictionary definition of "becomes" does not withstand judicial interpretations of RSL § 26-504.2 (a) subsequent to *Roberts*, such as *Altman*. Thus, *Altman*'s interpretation of the word "becomes" must control here.

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chose to define as the moment of vacatur, "becomes vacant" must exclude the post-vacancy period.[3]

The meaning of "becomes vacant" in the 2015 Act is even clearer when comparing it to the language of the 2011 Act. The 2011 Act merged the two clauses of the 1997 Act defining high-rent deregulation into one (*see Ovadiah*, supra). But while the 2011 Act retained the "is or becomes vacant" language of its predecessor, the 2015 Act did not. Rather, the Legislature chose to excise "is" from "is or becomes vacant," to simply "becomes vacant." The removal of "is" in the Rent Law of 2015 indicates an intentional omission by the Legislature, one that reveals an intent to eliminate the option of deregulating units that meet the threshold when the apartment "is" vacant.

Lastly, "becomes vacant" must also be read together with the second phrase of the 2015 Act ("where such legal regulated rent *was* two thousand seven hundred dollars or more ..." [italics added]). The use of the past tense here indicates that the legal regulated rent had to have reached the threshold at a prior, fixed point in time, namely, when the

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[3] One may argue that because "becomes vacant" is included within the second clause of the 1997 Act ("is or becomes vacant"), which *Altman* interpreted as after the vacancy, "becomes vacant" should be read to mean both the moment of vacancy as well as after. But this reading would undo the logic of *Altman*, which expressly distinguished the first clause of 1997 Act from the second. This interpretation would also render redundant the first clause, which runs afoul of the well-settled maxim that statutory interpretation that "render words or clauses superfluous should be rejected" (*Kuzmich*, 34 NY3d at 93; *see also Matter of Mestecky v City of New York*, 30 NY3d 239, 243 [2017]). *Altman*'s interpretation thus gives meaning and effect to every – or at least the maximum number of – words in the statute.

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apartment "becomes vacant." Had the Legislature intended to permit the threshold to be achieved without regard to a timeframe, it could have – and once had [4] – easily stated so.

In view of the plain meaning of "becomes vacant" and "was," and its symmetry throughout three pieces of legislation amending RSL § 26-504.2 (a), this Court concludes that for vacancies of rent-stabilized units after the effective date of the Rent Act of 2015 but prior to the effective date of the HSTPA, high-rent deregulation is permissible only if the legal regulated rent was $2,700.00 or more *at the moment* of vacancy.

Here, there is no dispute that when the prior tenant vacated the subject apartment in 2017, the legal rent was $1,154.51, and the unit was subject to rent-stabilization. There is also no dispute that, but for IAIs made to the apartment after the 2017 vacancy, the legal regulated rent would not have reached the 2015 Act's threshold of $2,700. Since, in the case at bar, the legal rent of the subject premises at the moment of vacatur in 2017 was below the threshold, Petitioner is barred from deregulating it solely based on increases taken during the post-vacancy period.

This court has considered the remainder of the arguments raised in the motion and considers them to be without merit. Accordingly, it is

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[4] Not only does the 1997 Act's first clause – held by *Altman* to mean at the moment of vacancy – also contain "was" ("where at the time the tenant vacated such housing accommodation the legal regulated rent was . . ."), but the second clause of 1997 Act – read by *Altman* to mean after the vacancy – uses the word "with" ("with a legal rent of two thousand dollars or more per month"). Whereas "with" has no relationship to time, "was" fixes the point at which the threshold needed to be crossed. This analysis is also consistent with the Rent Act of 2011, which also contained "with" rather than "was," that *Ovadiah* read as including both during and after the vacancy.

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ORDERED that Respondents Christopher Martinez and Alexander Prose's motion for dismissal is granted.

Dated: December 15, 2020

ENTER:

Zhuo Wang, JHC