Thome v Jack Parker Corp.
2021 NY Slip Op 31842(U)
June 1, 2021
Supreme Court, New York County
Docket Number: 152510/2018
Judge: W. Franc Perry

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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KATHRYN THOME, MICHAEL WILSON, ROCHELLE BERLINER, IRWIN REISER, MICHEL PEREZ, INNA LOS, DARIO SOLMAN, JILL MACKENZIE, CASSANDRA COLON, TAHMENA HAQUE

Plaintiff,

- v -

THE JACK PARKER CORPORATION, PARKER MANAGEMENT NEW YORK, LLC,PARKER FOREST HILLS L.P., PARKER YELLOWSTONE L.P., PARKER QUEENS L.P., BPP PARKER TOWERS PROPERTY OWNER LLC,BLACKSTONE PROPERTY PARTNERS L.P., BEAM LIVING COMPANY,

Defendant.

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INDEX NO. 152510/2018

MOTION DATE 04/22/2021

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99

were read on this motion to/for ORDER MAINTAIN CLASS ACTION

In this proposed class action involving allegations of residential rent overcharge, Plaintiffs Kathryn Thome, Michael Wilson, Michel Perez, Inna Los, Dario Solman, Jill MacKenzie, Cassandra Segarra Colon, Tahmena Haque, Rochelle Berliner, and Irwin Reiser (collectively "Plaintiffs") seek an order pursuant to CPLR 901 certifying this action as a class action. Defendants oppose the motion.

Background

On March 21, 2018, this action was commenced as a putative class action by Plaintiffs on behalf of all other tenants in the three buildings located at 104-20, 104-40, and 104-60 Queens Boulevard (the "Parker Towers"), currently living in, or who had lived in apartments that were deregulated during the period when J-51 tax benefits were being received by the owners of Parker

Towers, except those tenants who vacated before March 21, 2014 or any tenants whose occupancy in any such apartment commenced after such J-51 tax benefits to the building ended. (NYSCEF Doc No. 16, Complaint, at ¶ 166.) Plaintiffs also propose a sub-class consisting of all current tenants of Parker Towers who currently reside in an unlawfully deregulated apartment. (*Id.* at 168.)

According to the operative complaint, BPP Parker Tower Property Owner LLC is the current owner of the Parker Towers. (*Id.* at ¶ 1.) Parker Forest Hills LP, Parker Yellowstone LP, and Parker Queens LP each owned one of the three towers until November 2018. (*Id.* at ¶¶ 2-4.) Blackstone Property Partners LP is the current "indirect owner" of the Parker towers, while The Jack Parker Corporation was the indirect owner until November 2018. (*Id.* at ¶¶ 7, 5.) Beam Living Company is the current property management company, while Parker Management New York LLC was the management company until November 2018. (*Id.* at ¶¶ 8, 6.)

Plaintiffs allege that they did not receive rent-stabilized leases at the time they moved into apartments at the Parker Towers and were provided with non-rent stabilized renewal leases. (*Id.* at ¶ 11.) Plaintiffs further allege that the landlords of Parker Towers received J-51 tax benefits until December 2010 and were thus legally required to provide J-51 Riders to tenants, detailing the tax credit and disclosing when it expires. (*Id.* at ¶¶ 9-12.) Plaintiffs contend that because they did not receive the J-51 Riders, Plaintiffs and the members of the putative class are entitled to rent-stabilized leases for as long as they occupy their apartments. (*Id.* at ¶ 13.)

Plaintiffs also allege that the Defendants' improperly listed the apartments with the Division of Housing and Community Renewal ("DHCR") as being exempt from rent stabilization. (*Id.* at ¶¶ 16-17.) As such, Plaintiffs allege that they were deprived of a full rental history, entitling them to utilize the default formula, codified in Rent Stabilization Code ("RSC") § 2522.6[b][3], to

determine the legal regulated rent for their apartments. (*Id.* at ¶ 18.) Plaintiffs also allege that Defendants' December 2010 property tax filings for Parker Towers demonstrate that only 642 of the 1327 units were listed as rent-stabilized, in violation of the rent-stabilization laws and the J-51 Program's rules, which require all 1327 units to be rent-stabilized. (*Id.* at ¶¶ 26-28.)

Based on conduct that Plaintiffs allege demonstrates Defendants' intent to circumvent the requirements of New York's rent regulations at the expense of Plaintiffs and all tenants residing in the Parker Towers, the complaint sets forth five causes of action: 1) on behalf of the class, a violation of RSL § 26-512 based on the unlawful overcharges; 2) on behalf of the subclass, a violation of RSL § 26-512 based on Defendants' misrepresentation that the apartments were not subject to rent stabilization, for which Plaintiffs seek a declaratory judgment that they are entitled to an accurate reformation of their leases; 3) on behalf of the subclass, a declaratory judgment that the apartments of Plaintiffs and members of the subclass are subject to the RSL and RSC, that any purported deregulation by Defendants was invalid as a matter of law, and that each are entitled to a rent stabilized lease in a lease form promulgated by DHCR; 4) on behalf of the class, unjust enrichment; and 5) on behalf of the class, attorneys' fees. (*Id.* at ¶¶ 182-215.)

Now, Plaintiffs move for an order certifying the action as a class action; appointing Plaintiffs Katherine Thome, Michael Wilson, Rochelle Berliner, Michel Perez, and Dario Solman as Lead Plaintiffs and Class Representatives; and appointing the law firm of Newman Ferrara LLP as counsel for the class.

Discussion

Whether a lawsuit qualifies as a class action rests within the sound discretion of the trial court. (*Askey v Occidental Chem. Corp.*, 102 AD2d 130 [4th Dept 1984].) The movant bears the burden of proving that the prerequisites set forth in CPLR 901[a] have been met. (*Kudinov v. Kel-*

Tech Constr. Inc., 65 AD3d 48 [1st Dept 2009].) It is well settled that CPLR 901[a] "should be broadly construed" and that "the Legislature intended article 9 to be a liberal substitute for the narrow class action legislation which preceded it." (*City of New York v Maul*, 14 NY3d 499, 509 [2010]; *see also Brandon v Chefetz*, 106 AD2d 162, 168 [1st Dept 1985] [holding that the prerequisites of CPLR 901[a] are to be liberally construed, since the State's policy favors the maintenance of class actions].)

The court must also consider the five factors enumerated in CPLR 902, but consideration of those factors is not triggered until the prerequisites of CPLR 901[a] have been met. (2 Weinstein-Korn-Miller, NY Civ Prac P 902.06.) If there is any doubt in deciding whether to certify a class, the court should err in favor of allowing the class action. (*Super Glue Corp. v Avis Rent A Car Sys.*, 132 AD2d 604 [2d Dept 1987]). The court may consider the merits of plaintiffs' claims only to the extent of ensuring those claims are not a sham. (*Pludeman v Northern Leasing Sys., Inc.*, 74 AD3d 420, 422 [1st Dept 2010]; *Kudinov*, 65 AD3d at 482; *Jim & Phil's Family Pharm. v Aetna U.S. Healthcare*, 271 AD2d 281, 282 [1st Dept 2000]), as CPLR 902 contemplates a determination of class certification "early in the litigation . . . well before any determination on the merits." (*O'Hara v Del Bello*, 47 NY2d 363, 369 [1979]).

CPLR 901(a) sets forth five threshold requirements that must be satisfied before a class action may be maintained:

> 1. the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;
> 2. there are questions of law or fact common to the class which predominate over any questions affecting only individual members;
> 3. the claims or defenses of the representative parties are typical of the claims or defenses of the class;
> 4. the representative parties will fairly and adequately protect the interests of the class; and
> 5. a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Plaintiffs argue that they have satisfied each of these five prerequisites and that courts "regularly and without exception hold that certification of cases arising out of landlords' violations of the J-51 Program is proper." (NYSCEF Doc No. 78, Pls.' Mem. at 6, citing *Borden v 400 East 55th Street Associates, LP*, 24 NY3d 382 [2014].)

Specifically, as to numerosity, Plaintiffs allege that Defendants' July 2013 property tax statements for the Parker Towers demonstrate that only 490 of the 1327 units were listed as rent-stabilized, meaning that 837 units were being impermissibly treated as deregulated. (Pls.' Mem at 7.) Plaintiffs argue that common sense dictates that numerosity has been established here, as courts have noted that the Legislature "contemplated classes involving as few as 18 members." (*Id.*, quoting *Borden*, 24 NY3D at 399.) In opposition, Defendants argue that the legislative history of CPLR 901[a] reveals that numerosity is presumed at a level of 40 members, and that Plaintiffs cannot establish that the Class consists of 40 members due to a lack of evidence. (NYSCEF Doc No. 87, Opposition, at 6, citing *Cupka v Remik Holdings LLC*, 2020 WL 2145778 [Sup Ct, NY County 2020].)

The court finds that Plaintiffs have satisfied the numerosity requirement of CPLR 901[a][1]. Unlike in *Cupka*, where "[a]fter years of preclass discovery, all plaintiffs' counsel [could] do [was] point to defendant's 'tax bills', which [had] not even been provided to the court," Plaintiffs here submit documentation demonstrating the establishment of numerosity.

As to the predominance of common issues and typicality, Plaintiffs have demonstrated that the predominant legal questions apply to the entire class: whether Defendants received J-51 benefits, whether Defendants deregulated apartments while receiving those benefits, which tenants resided in those apartments during those time periods, and whether Defendants wrongfully charged market rents while accepting J-51 benefits. (*See Borden*, 24 NY3d at 399.) Defendants' arguments

that each Plaintiff's rent overcharge claim would have to be calculated separately are inapposite. (*Id.*, [holding that although "the amount of damages suffered by each class member typically varies from individual to individual, [ ] that fact will not prevent the suit from going forward as a class action if the important legal or factual issues involving liability are common to the class"].)

As to whether Plaintiffs would adequately represent the interests of the Class, the court must consider "whether a conflict of interest exists between the representative and the class members, the representative's background and personal character, as well as his familiarity with the lawsuit, to determine his ability to assist counsel in its prosecution . . . and, significantly, the competence, experience, and vigor of the representative's attorneys and the financial resources available[.]" (*Pruitt v Rockefeller Center Properties, Inc.*, 167 AD2d 14, 24 [1st Dept 1991] [internal citations omitted]; *see also Ackerman v Price Waterhouse*, 252 AD2d 179, 202 [1st Dept. 1998].)

Here, Plaintiffs Berliner, Perez, Solman, Thome, and Wilson seek to be designated Lead Plaintiffs and each submit an affidavit attesting to their qualifications and background. (NYSCEF Doc Nos. 59, 62, 63, 65, 68.) The Plaintiffs further aver that they are aware of their responsibilities as Lead Plaintiffs, that they owe duties of loyalty to their class, that they will not seek treble damages upon class certification, and that proposed class counsel have explained to them their rights and various developments that have occurred since the action was commenced. (*Id.*) Plaintiffs have demonstrated that they share a common goal in ensuring that they are charged the legal maximum rent and that Defendants comply with the requirements set forth in the rent regulation statutory framework.

Likewise, Plaintiffs have demonstrated that proposed class counsel, Newman Ferrara LLP, has substantial expertise in class actions and complex commercial cases, including cases involving

deregulation and rent overcharges. (*See* NYSCEF Doc No. 76, Firm Resume.) Additionally, the firm has assumed the full financial risk of the litigation, thus rendering the financial condition of the Plaintiffs irrelevant. (Pls.' Mem at 10.) Accordingly, the proposed counsel possesses the requisite "competence, experience and vigor" to serve as counsel for the Class. (*See Fiala v Metropolitan Life Ins. Co.*, 52 AD3d 251, 251 [1st Dept 2008].) Based on a review of the submissions, this court finds that plaintiff has satisfied the adequacy of representation requirement set forth in CPLR 901[a][4].

Lastly, as to superiority, the alternatives to a class action would be individual actions by tenants or administrative proceedings. The court finds that litigating the claims alleged in the complaint as a class action will conserve judicial resources by avoiding a multiplicity of lawsuits involving the same basic facts. The liability determinations are the same for the proposed class members; thus, adjudicating the claims individually would be inefficient. (*See Borden*, 24 NY3d at 399.) Accordingly, Plaintiffs have satisfied the final requirement of CPLR 901[a].

Consideration of the requirements set forth in CPLR 902 does not compel a different result. In addition to the prerequisites of CPLR 901, other factors that a court may consider under CPLR 902 in deciding whether to certify a class action are: (1) the interest of the class members in individually controlling the prosecution of separate actions; (2) the impracticality of prosecuting separate actions; (3) the extent of any litigation already commenced by members of the class; (4) the desirability of concentrating the litigation in a particular forum; and (5) the difficulties likely encountered in the management of a class action. (CPLR 902.)

"Most of these considerations [in CPLR 902] are implicit in CPLR 901" and the court's analysis as set forth above demonstrates that Plaintiffs have met their burden for class certification.

(*Gilman v Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 93 Misc. 2d 941, 948 [Sup Ct, NY County 1978].) Thus, it is hereby

ORDERED that Plaintiffs' motion sequence 003, pursuant to CPLR 901, for class certification is granted; and it is further

ORDERED that the certified Class consists of all tenants at Parker Towers living, or who had lived, in apartments deregulated during the period J-51 tax benefits were being received by the owner of Parker Towers except that the class shall not include (i) any tenants who vacated before March 21, 2014, or (ii) any tenants whose occupancy in any such apartment commenced after such J-51 tax benefits at Parker Towers ended; and it is further

ORDERED that the certified sub-class consists of all current tenants at the Parker Towers; and it is further

ORDERED that named Plaintiffs Rochelle Berliner, Michel Perez, Dario Solman, Kathryn Thome, and Michael Wilson are appointed as Lead Plaintiffs; and it is further

ORDRED that Newman Ferrara LLP is appointed as counsel for the class.

06/01/2021
DATE

W. FRANC PERRY, J.S.C.

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