CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART G

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SHLOMO KARPEN,

Index No. 87287/17
87288/17
87730/18

Petitioner,

-against-

DECISION/ORDER

MANUEL CASTRO and MIRIAM ANDRADE,

Respondents.

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SHLOMO KARPEN,

Petitioner,

-against-

JUAN PABLO AREVALO and GUADALUPE ROMERO,

Respondents.

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SHLOMO KARPEN,

Petitioner,

-against-

JULIO ANDRADE,

Respondent.

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KEVIN C. McCLANAHAN, J.H.C.:

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion: for leave to renew.

Papers	**Numbered**
Notice of motion and Affidavits Annexed.....	1-2

Answering Affidavits 4
Replying Affidavits .....
Exhibits 3
Other.....

Upon the foregoing cited papers, the decision/order on this motion is as follows:

In its prior Decision/Order dated November 20, 2019, this Court dismissed the instant personal use proceedings based on the newly enacted Housing Stability and Tenant Protection Act of 2019 (hereinafter, the "HSTPA") finding the retroactive applicability of the statute to be constitutional and not a violation of petitioner's due process rights. Subsequently, the First Department decided *Harris v. Israel*, - NYS3d -, 2021 N.Y. Slip Op. 796 (N.Y. App. Div. 2021)(1st Dept 2021) which barred retroactive application of Part I (L 2019, ch 36, § 2), Rent Stabilization Law of 1969 [Administrative Code of City of NY] § 26-511(c)(9)(b). Petitioner asks this Court to vacate its prior dismissal of the proceedings and restore them to the calendar for trial asserting that there has been "a change in the law that would change the prior determination." *CPLR Rule 2221(e)*. Respondent opposes the motion. The reader of this decision/order is presumed to be familiar with the facts of this case and the prior order is incorporated herein by reference.

A motion to renew is based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination. *Foley v. Roach*, 86 AD2d 887 (2nd Dept 1982). Furthermore, the doctrine of stare decisis requires trial courts in this department to follow precedents set by the Appellate Divisions of another department until the Court of Appeals or this department pronounces a contrary rule. *Mountain View Coach v. Storms*, 102 AD2d 663 (2nd Dept 1984). This rule does not pertain if the legal question addressed is one of first impression or not expressly decided by the higher court. In such circumstances, the concerns of uniformity and consistency do not present themselves. *Mountain View Coach v. Storms*, supra.

HARRIS V. ISRAEL

The Harris proceeding was commenced in September 2016 when the owner sought to recover the apartment for personal use. A possessory judgment was issued in the owner's favor in July 2018 and a warrant of eviction was issued in August 2018 but was stayed pending an appeal to the Appellate Term. Applying Part I of the HSTPA which took effect in June 2019, the Appellate Term reversed and remanded the proceeding in December 2019. Following *Regina Metropolitan Co., LLC v. New York State Div. Of Hous. And Comm. Renewal*, 35 NY3d 332 (2020), the First Department reversed the Appellate Term holding that Part I of the HSTPA had been applied retroactively and that such application violated due process:

> However, four months after Appellate Term issued its decision in this proceeding, the Court of Appeals decided Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal (35 NY3d 332 [2020]), holding that HSTPA Part F, relating to rent overcharges, could not be applied to pending cases because "application of these amendments to past conduct would not comport with our retroactivity jurisprudence or the requirements of due process" (id. at 349).
> We conclude that the same reasoning applies with equal measure to HSTPA Part I. Like the amendment in Regina Metro, this amendment "impair[s] rights owners possessed in the past, increasing their liability for past conduct and imposing new duties with respect to transactions already completed" (id. at 369). Therefore, a presumption against retroactivity applies (id. at 370). The pre-Regina Metro cases notwithstanding, the determination of the Court of Appeals that an owner's increased liability and the disruption of relied-upon repose are impairments to his or her substantive rights precludes any retroactive application of HSTPA Part I to this proceeding, where petitioner had spent several years reclaiming all other units at the property and was ultimately awarded a judgment of possession to the premises before HSTPA's enactment (id. at 379). "[T]here is no indication here that the legislature considered th[is] harsh and destabilizing effect on [petitioner's] settled expectations, much less had a rational justification for that result" (id. at 383).

The First Department limited its decision to the specific "proceeding" before it and explained the factual basis for its determination: "where petitioner had spent several years reclaiming all other units at the property and was ultimately awarded a judgment of

possession...before HSTPA's enactment." Clearly, the pre-HSTPA possessory judgment was central to the First Department's due process analysis.

Similarly in the *Regina* decision, the Court of Appeals cited two personal use cases in which a newly enacted statute was applied on appeal despite a judgment of possession and certificate of eviction having already been issued. See *Matter of McMurray v. New York State of Div of Hous. & Community Renewal*, 72 NY2d 1022 (1988); *Matter of Cirella v. Joy*, 69 NY2d 973 (1987). Thus, the Court of Appeals' due process analysis was directly informed by the fact that the landlord's right to possession had been granted to only be stripped away by application of the newly enacted statute. Relying on the *Regina* decision, the First Department adopted the factual underpinning of the Court of Appeals' due process analysis. Thus, its citation of the post-judgment posture of the proceeding before it was not merely dicta. In a summary proceeding, the judgment of possession is the central relief sought as it annuls the relationship of landlord and tenant. The judgment of possession fixed the rights and obligations of all parties to the proceeding. As noted by the *Harris* court, vacating the judgment of possession after the enactment of the HSTPA destabilized petitioner's "settled expectations."

As persuasively argued by respondents, there are two possible readings of the *Harris* decision. First, Part I of the statute operated retroactively because of the owner's pre-HSTPA judgment and, in such post-judgment cases, retroactive application does not comport with due process. Second, Part I of the statute operates retroactively when applied to any pending case, whether pre- or post-judgment, and such application does not comport with due process. The briefs of the parties to *Harris* supports the first interpretation.

Petitioner-owner in *Harris* argued that "[o]riginally, the trial court vindicated Petitioner-Appellant's then-existing right to repossess his real property for personal use, culminating in the

issuance of a warrant of eviction against respondent." See *Brief For Petitioner-Landlord-Appellant at p.13-14*. The owner noted that the effective date provisions of the HSTPA did not expressly restore a landlord-tenant relationship "where said relationship had been severed prior to the law's enactment." Again, the owner directly connected his successful appellate argument to the existence of a judgment of possession, the annulling of the landlord/tenant relationship by issuance of a warrant, and the expectations and rights created by these facts.

The petitioner-owner in *Harris* went on to suggest an interpretation of the Legislature's intent that would comport with constitutional due process: the statute "would apply Part I to all occupants who, at the time the law was enacted, either (1) had a lease in effect, or (2) were otherwise not subject to a warrant of eviction." See *Reply Brief for Petitioner-Appellant at p 9-10*. Ultimately, the *Harris* Court did not explicitly adopt this view of legislative intent but did rule that retroactive application of the HSTPA "impair[s] rights owners possessed in the past, increasing their liability for past conduct and imposing new duties with respect to transactions already completed." The right before the *Harris* court was the petitioner-owner's right to repossess the property for personal use based on the judgment of possession entered by the court prior to the enactment of the HSTPA. The new duties were clearly the reinstatement of the landlord/tenant relationship and concomitant rent regulated contract.

THE INSTANT PROCEEDING

The facts of the instant proceeding are distinguishable from those in *Harris*. Here, petitioner has not obtained a judgment of possession. Thus, his rights have not been adjudicated and fixed by the courts. The landlord/tenant relationship is intact until the court affirms petitioner's right not to renew the rent regulated lease. Contrary to petitioner's contention, the

pre-judgment posture of this proceeding is more than "a distinction without a difference." As noted earlier, the judgment of possession is the central relief sought in this summary proceeding.

The application of a new statute to a pending case is not automatically retroactive. *Regina*, supra, at 365-67. "A statute does not operate retroactively merely because it is applied in a case arising from conduct antedating the statute's enactment, or upsets expectations based in prior law. *Langraf v. USI Film Products*, 511 US 244 (1994). A new statute's application in a pending case is retroactive only when it "takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty...." *Langraf*, supra. "If, on the other hand, it "affects only 'the propriety of prospective relief' or the nonsubstantive provisions governing the procedure for adjudication of a claim, the new statute operates prospectively. *Regina*, supra, at 365 quoting *Landgraf*, 511 US at 273.

Looking back at *Harris*, the First Department concluded that application of Part I operated retroactively in that proceeding as it increased the owner's liability for past conduct and imposed new duties as previously discussed. The due process violation was directly rooted in the issuance of the judgment of possession and its vacatur by the courts. In the instant proceeding, a judgment of possession has not issued. The rights of the parties have not been determined. Applying the HSTPA to this pre-judgment proceeding does not take away or impair the vested rights of petitioner herein. Petitioner does not "...have in any particular rule an interest so vested as to entitle it to keep the rule unchanged." *I.L.F.Y. Co. v. Temporary State Hous. Rent Commn.*, 10 NY2d 263 1961 at p 270. This Court's interpretation of the *Harris* decision draws a sensible line from the pre-*Regina* jurisprudence to the application of Part I of the newly enacted HSTPA.

This Court holds that the *Harris* decision is not a change in law for pre-judgment proceedings and is distinguishable from the instant case. As a question of first impression for the Second Department, the Court hereby denies the renewal motion and adheres to its prior decision and order.

Dated: June 10, 2021
Brooklyn, NY

Kevin C. McClanahan, J.H.C